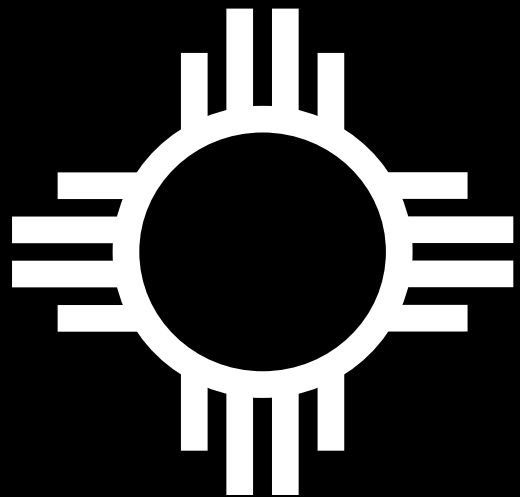


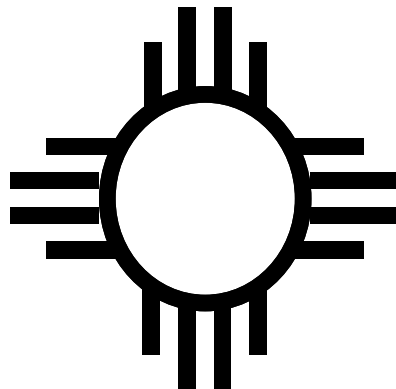
**NEW
MEXICO
REGISTER**



Volume XVII
Issue Number 6
March 31, 2006

New Mexico Register

**Volume XVII, Issue Number 6
March 31, 2006**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2006

COPYRIGHT © 2006
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVII, Number 6

March 31, 2006

Table of Contents

Notices of Rulemaking and Proposed Rules

Children, Youth and Families Department

Protective Services Division

Notice of Public Hearing 315

Engineer, Office of the State

Notice of Proposed Regulations and Public Hearing 315

Game Commission

State Game Commission Public Meeting and Rulemaking Notice 315

Oil Conservation Commission

Notice of Rulemaking 316

Public Education Department

Notice of Public Hearing 316

Cancellation of Notice of Proposed Rulemaking to Adopt New Rule 6.75.4 NMAC 318

Public Regulation Commission

Notice of Proposed Rulemaking 318

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Auditor, Office of the State

2.2.2 NMAC R Requirements for Contracting and Conducting Audits of Agencies 321

2.2.2 NMAC N Requirements for Contracting and Conducting Audits of Agencies 321

Chiropractic Examiners Board

16.4.1 NMAC A Chiropractic Practitioners: General Provisions 367

16.4.18 NMAC A Practice Procedures 369

Cultural Affairs, Department of

Library Division

4.5.7 NMAC A Requirements Governing Conduct and Use by Patrons at the New Mexico State Library 370

Dental Health Care, Board of

16.5.4 NMAC N Emergency Licensure Provisions 371

16.5.5 NMAC A Dentists, Fees 372

16.5.6 NMAC A Dentists, Licensure by Examination 372

16.5.12 NMAC A Dentists, Retirement, Inactive and Reinstatement 372

16.5.18 NMAC A Dental Hygienists, Fees 373

16.5.20 NMAC A Dental Hygienists, Licensure by Credentials 374

16.5.25 NMAC A Dental Hygienists, Retirement, Inactive and Reinstatement 374

16.5.2 NMAC Rn & A Impaired Practitioner Program 374

16.5.3 NMAC Rn & A Mandatory Reporting Requirements 374

16.5.10 NMAC Rn & A Dentists, Continuing Education Requirements 375

16.5.11 NMAC Rn & A Dentists, License Expiration and Renewal 375

16.5.13 NMAC Rn & A Dentists, License Revocation for Non-Renewal 375

16.5.23 NMAC Rn & A Dental Hygienists, Continuing Education Requirements 376

16.5.24 NMAC Rn & A Dental Hygienists, License Expiration and Renewal 376

16.5.26 NMAC Rn & A Dental Hygienists, License Revocation for Non-Renewal 376

16.5.28 NMAC Rn & A Dental Hygienists, Local Anesthesia Certification 376

16.5.29 NMAC Rn & A Dental Hygienists, Practice 377

16.5.32 NMAC	Rn & A	Dental Assistants, Fees	377
16.5.35 NMAC	Rn & A	Dental Assistants, Certificate Expiration and Renewal	377
16.5.36 NMAC	Rn & A	Dental Assistants, Continuing Education Requirements	377
16.5.37 NMAC	Rn & A	Dental Assistants, Certificate Revocation for Non-Renewal	377
16.5.40 NMAC	Rn & A	Dental Assistants, Disciplinary Proceedings	378
Energy, Minerals and Natural Resources Department			
3.13.19 NMAC	A	Renewable Energy Production Tax Credit	378
Game and Fish, Department of			
19.31.3 NMAC	A	Hunting and Fishing License Application	381
19.34.7 NMAC	A	Private Land Entry and Sportsmen Enjoyment Program	382
Human Services Department			
Medical Assistance Division			
8.200.520 NMAC	A	Income Standards	383
Personnel Board, State			
1.7.1 NMAC	A	State Personnel Administration: General Provisions	384
1.7.4 NMAC	A	Pay.	385

Other Material Related to Administrative Law

Children, Youth and Families Department and Aging and Long-Term Services Department

Notice of Public Hearing	387
------------------------------------	-----

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

**NEW MEXICO
CHILDREN, YOUTH AND
FAMILIES DEPARTMENT
PROTECTIVE SERVICES
DIVISION**

**NEW MEXICO
CHILDREN, YOUTH AND FAMILIES
DEPARTMENT**

PROTECTIVE SERVICES

NOTICE OF PUBLIC HEARING

Protective Services (PS) will hold a public hearing in Santa Fe on Monday, May 1, 2006 from 1:00 p.m. to 2:00 p.m. Interested parties are invited to make comments regarding proposed revisions to the child protective services investigation policy 8.18.6. The policy is being revised to include new language regarding parental notification of allegations and investigation interviews.

The hearing will be held at the Public Employees Retirement Association (PERA) Building at 1120 Paseo de Peralta, Santa Fe, NM 87501, Room 227. The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The current and proposed policies may be accessed by contacting Mark J Ruttkay at 505-827-8445. Copies can also be requested through the use of the New Mexico relay system by calling 505-827-7586.

**NEW MEXICO OFFICE OF
THE STATE ENGINEER**

**NOTICE OF PROPOSED REGULA-
TIONS AND PUBLIC HEARING**

OFFICE OF THE STATE ENGINEER
P.O. BOX 25102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6120

www.ose.state.nm.us

The State Engineer has released proposed regulations on The Use of Public Underground Waters for Household or other Domestic Use. The proposed regulations will replace Article 1-15 of the existing Rules and Regulations Governing the Appropriation and Use of Ground Water in New Mexico. The proposed regulations were developed to reflect the current demand on existing water supplies and the current administrative practices for the issuance of permits and the use of public underground waters in accordance with NMSA 1978, Section 72-12-1.1.

The proposed regulations on The Use of Public Underground Waters for Household or other Domestic Use contain the following sections: (1) Issuing Agency, (2) Scope, (3) Statutory Authority, (4) Duration, (5) Effective Date, (6) Objective, (7) Definitions, (8) Fee Schedule, (9) Application for Permit to Use Public Underground Waters in Accordance with Section 72-12-1.1 NMSA, (10) Application for Permit for Expedited Transfer to a 72-12-1.1 Well - Diversion of Water not to Exceed Three Acre-Feet per Annum, (11) Changes to Permitted or Adjudicated Water Use Under Section 72-12-1.1 NMSA, (12) Action of the State Engineer, (13) Domestic Well Management Area, (14) Cancellation of Permit, (15) Liberal Constructions, and (16) Severability

The proposed regulations are available at the Office of the State Engineer in Santa Fe, Albuquerque, Las Cruces, Roswell, Deming, Aztec, and Cimarron. The proposed regulations are also posted on the Office of the State Engineer web site and may be accessed as follows:

- a. Start from the OSE home page at www.ose.state.nm.us
- b. On the OSE home page, under the heading of Hot Topics, click on the link for "New Domestic Wells Rules and Regulations"

To request that a copy of the rules and regulations be sent to you in the mail, please contact Paul Wells at 505-827-6120 or email paul.wells@state.nm.us

A public hearing will be held on the above described proposed regulations at Larazolo Hall in the Runnels Building, 1190 South Saint Francis Drive, Santa Fe, New Mexico, on April 21, 2006, beginning at 9:00 a.m. Any person who is or may be affected by these proposed rules and regulations may

appear and testify. If you are an individual with a disability who is in need of special assistance or accommodation to attend or participate in the hearing, please contact Paul Wells at (505) 827-6120. The Office of the State Engineer requests ten days advance notice to provide any special accommodation.

Written comments on the proposed regulations may be submitted to the Office of the State Engineer in Santa Fe or to any of the district offices. Written comments on the proposed rules and regulations may also be mailed to:

Office of the State Engineer
Attn: Paul Wells
P.O. Box 25102
Santa Fe, NM 87504.

Please submit your written comments to the Office of the State Engineer no later than April 7, 2006. After April 7, comments should be submitted at the hearing in Santa Fe on April 21, 2006.

**NEW MEXICO GAME
COMMISSION**

**STATE GAME COMMISSION
PUBLIC MEETING AND
RULEMAKING NOTICE**

On Thursday, April 6, 2006, beginning at 9:00 a.m. at the New Mexico Junior College, Bob Moran Hall, Room 111, 5317 Lovington Highway, Hobbs, New Mexico 88240, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Consent Agenda for Committee Reports, including Legislative Summary, Revocations, and 2nd and 3rd Quarter Depredation Report; Presentation of the Fiscal Year 2005 Financial Statements and Audit Report; Biennial Review of New Mexico State-Listed Wildlife (19.33.6.8, NMAC); Update on Land Conservation Funding Project Reviews; Presentation of a Draft Recommendation of the New Mexico Hunter and Trapper Harvest Reporting Rule, 19.30.10, NMAC; Penalty Assessment Issuance and Revocation Reinstatement, 19.31.3 and 19.31.2, NMAC; Director's Recommendation Regarding Lesser Prairie Chicken Status Investigation; General Public Comments (limited to 3 minutes); Closed Executive Session to discuss litigation, personnel, and acquisition or disposal of real property or

water rights, and pursuant to Section 10-15-1(H)(1), NMSA, 1978, Guide/Outfitter Notice of Contemplated Commission Action pursuant to 19.30.8, NMAC, or 17-2A-3, NMSA, 1978; and Acquisition of the Horse Springs Ranch Easement Utilizing the Land Conservation Appropriation.

The following rules are opened for public comment and consideration by the Commission:

- * Big Game and Turkey Rule, 19.31.8, NMAC;
- * Manner and Method Rule, 19.31.10, NMAC;
- * Boundary Descriptions Rule, 19.30.4, NMAC;
- * Quality Hunt Criteria and Areas Rule, 19.30.7, NMAC;
- * Hunting and Fishing License Application Rule, 19.31.3, NMAC;
- * Trapping and Furbearers Rule, 19.32, Parts 1 and 2, NMAC;
- * Predator Management Rule, 19.30.6, NMAC;
- * Bighorn Enhancement Rule, 19.31.7, NMAC;
- * Upland Game Rule, 19.31.5, NMAC; and Waterfowl Rule, 19.31.6, NMAC; and
- * Penalty Assessment Issuance and Revocation Reinstatement, 19.31.3 and 19.31.2, NMAC.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO OIL CONSERVATION COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the public hearing scheduled for **Thursday, March 23, 2006**, as published in the February 28 edition of the Register, concerning the adoption of amendments to 19.15.1, 19.15.2 and 19.15.9 NMAC (Surface Waste Management Rules), has been postponed, and will be held on **Thursday, April 20, 2006**, at 9:00 A.M., in Porter Hall, 1220 South St. Francis Drive, in Santa Fe. Copies of the text of the proposed amendments are available from Division Administrator Florene Davidson at (505)-476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/what-new.htm>. Written comments on the proposed amendments must be received no later than 5:00 P.M. on Thursday, April 13, 2006. Written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 15 day of March, 2006.

STATE OF NEW MEXICO OIL CONSERVATION DIVISION

Mark E. Fesmire, P.E.
Director, Oil Conservation Division

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

New Mexico Public Education Department

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 10:00 AM on Wednesday, May 3, 2006 at the Educator Quality Division Offices at 444 Galisteo, Suite A, Santa Fe, New Mexico. The purpose of the public hearing will be to obtain input on the following rules:

See Table on following page

Rule Number	Rule Name	Proposed Action
6.60.2 NMAC	<u>DEFINITIONS OF "LICENSE", "LICENSED", AND "LICENSURE"</u>	Repeal rule
6.60.5 NMAC	<u>COMPETENCY TESTING FOR LICENSURE</u>	Amend rule
6.60.6 NMAC	<u>CONTINUING LICENSURE FOR LICENSED EDUCATORS IN NEW MEXICO</u>	Amend rule
6.60.7 NMAC	<u>EDUCATOR LICENSURE APPLICATION FEE</u>	Amend rule
6.60.8 NMAC	<u>BACKGROUND CHECKS FOR EDUCATOR LICENSURE</u>	Amend rule
6.61.2 NMAC	<u>LICENSURE IN ELEMENTARY EDUCATION, GRADES K -8</u>	Amend rule
6.61.3 NMAC	<u>LICENSURE IN MIDDLE LEVEL EDUCATION, GRADES 5 -9</u>	Amend rule
6.61.4 NMAC	<u>LICENSURE IN SECONDARY EDUCATION, GRADES 7 -12</u>	Amend rule
6.61.5 NMAC	<u>LICENSURE FOR GRADES KINDERGARTEN THROUGH 12</u>	Amend rule
6.61.6 NMAC	<u>LICENSURE IN SPECIAL EDUCATION K -12</u>	Amend rule
6.61.7 NMAC	<u>LICENSURE IN SECONDARY VOCATIONAL -TECHNICAL EDUCATION</u>	Amend rule
6.61.8 NMAC	<u>LICENSURE IN EARLY CHILDHOOD EDUCATION, BIRTH -- GRADE 3</u>	Amend rule
6.61.10 NMAC	<u>TEACHERS OF STUDENTS WITH BLINDNESS/VISUAL IMPAIRMENT B -12</u>	Amend rule
6.62.2 NMAC	<u>LICENSURE FOR EDUCATIONAL ADMINISTRATOR, GRADES K -12</u>	Amend rule
6.63.2 NMAC	<u>LICENSURE FOR SCHOOL NURSES, GRADES K -12</u>	Amend rule
6.63.3 NMAC	<u>LICENSURE FOR ANCILLARY PERSONNEL NOT COVERED IN OTHER ANCILLARY REGULATIONS</u>	Amend rule
6.63.4 NMAC	<u>LICENSURE IN EDUCATION DIAGNOSIS</u>	Amend rule
6.63.5 NMAC	<u>LICENSURE FOR SCHOOL PSYCHOLOGISTS, K -12</u>	Amend rule
6.63.6 NMAC	<u>LICENSURE FOR SCHOOL COUNSELORS, K -12</u>	Amend rule
6.63.7 NMAC	<u>LICENSURE FOR SCHOOL SOCIAL WORKERS, K -12</u>	Amend rule
6.63.9 NMAC	<u>LICENSURE FOR EDUCATIONAL ASSISTANTS</u>	Amend rule
6.63.11 NMAC	<u>LICENSURE IN REHABILITATION COUNSELING, K -12</u>	Amend rule
6.63.14 NMAC	<u>CERTIFICATION IN NATIVE AMERICAN LANGUAGE AND CULTURE, K-12</u>	Amend rule
6.63.15 NMAC	<u>LICENSURE FOR SCHOOL HEALTH ASSISTANTS, GRADES K -12</u>	Amend rule
6.64.2 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL LANGUAGE ARTS TEACHERS</u>	Amend rule
6.64.3 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL READING TEACHERS</u>	Amend rule
6.64.4 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL MATHEMATICS TEACHERS</u>	Amend rule
6.64.5 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL SCIENCE TEACHERS</u>	Amend rule
6.64.6 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL HISTORY, GEOGRAPHY, ECONOMICS, CIVICS AND GOVERNMENT TEACHERS</u>	Amend rule
6.64.7 NMAC	<u>COMPETENCIES FOR ENTRY-LEVEL HEALTH EDUCATION TEACHERS</u>	Amend rule
6.64.8 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL LIBRARY MEDIA SPECIALISTS</u>	Amend rule
6.64.9 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL INFORMATION TECHNOLOGY COORDINATORS</u>	Amend rule
6.64.10 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL BILINGUAL EDUCATION TEACHERS</u>	Amend rule
6.64.11 NMAC	<u>COMPETENCIES FOR LICENSURE - TESOL COMPETENCIES</u>	Amend rule
6.64.12 NMAC	<u>LICENSURE IN MODERN, CLASSICAL, AND NATIVE LANGUAGES</u>	Amend rule
6.64.13 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL PERFORMING ARTS AND VISUAL ARTS EDUCATION TEACHERS</u>	Amend rule
6.64.14 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL PHYSICAL EDUCATION TEACHERS</u>	Amend rule
6.64.15 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL FAMILY AND CONSUMER SCIENCES TEACHERS</u>	Amend rule
6.64.16 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL TECHNOLOGY STUDIES/EDUCATION TEACHERS</u>	Amend rule
6.64.17 NMAC	<u>COMPETENCIES FOR ENTRY -LEVEL AGRICULTURAL EDUCATION TEACHERS</u>	Amend rule
6.65.2 NMAC (Proposed NMAC Number)	<u>PROFESSIONAL DEVELOPMENT FRAMEWORK</u> (Proposed Part Name)	Adopt new rule

Quality Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (jolynn.gallegos@state.nm.us) (telefax (505) 827-3525). Written comments must be received no later than 5 p.m. on May 3, 2006. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Ms. Gallegos at (505) 827-3582 or as indicated in the preceding paragraph. The proposed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Gallegos as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

CANCELLATION OF NOTICE OF PROPOSED RULEMAKING TO ADOPT NEW RULE 6.75.4 NMAC

The Public Education Department ("Department") published a Notice of Proposed Rulemaking in the New Mexico Register Volume XVII, Issue Number 2 (January 31, 2006) and in the Albuquerque Journal informing of its intent to seek public comment on the adoption of proposed new rule 6.75.4 NMAC (IMPLEMENTATION OF THE BRAILLE ACCESS ACT) and scheduling a public hearing to receive public comments. After further consideration, the Department withdraws its notice with respect to the proposed rule and advises of its intent to redraft the proposed rule to incorporate requirements of the Individuals with Disabilities Education Improvement Act of 2004 requiring each state to adopt the National Instructional Materials Accessibility Standard. A new notice of proposed rulemaking will be issued at later date, setting forth the new comment period, new public hearing date, and information regarding the revised draft.

The Notice published in the New Mexico Register Volume XVII, Number 2 (January 31, 2006) regarding other items of proposed rulemaking remains valid and in force. Any

questions should be addressed to Ms. Betty Kee, Bureau Chief, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6415.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW
MEXICO PUBLIC REGULATION
COMMISSION

IN THE MATTER OF
THE REVIEW
OF THE PROCESS FOR
COMMISSION
REVIEW OF INTERCONNECTION
AGREEMENTS AND Case No.
"COMMERCIAL 05-00104-UT
AGREEMENTS"

NOTICE OF PROPOSED
RULEMAKING

This matter comes before the New Mexico Public Regulation Commission ("Commission") as a follow-up to the Hearing Examiner's Report on Workshops.

THE COMMISSION FINDS AND CON-
CLUDES:

1. On March 15, 2005, this Commission began this case through issuance of its Order Establishing Notice of Inquiry for the "purposes of considering whether a more efficient process exists for reviewing whether an agreement is an interconnection agreement and for reviewing those agreements that are interconnection agreements and of developing a proposed rule." The Commission ordered that the Notice of Inquiry be conducted through a series of workshops and designated a hearing examiner to manage the Notice of Inquiry process and serve as moderator for the workshops. The Commission directed the hearing examiner to make a written report to the Commission of the results of the workshops.

2. On July 18, 2005, the Hearing Examiner issued her Report on Workshops. Attached to the Report on Workshops are proposed procedures submitted by Qwest Corporation ("Qwest") during the workshop process. The proposed procedures streamline the process for submission of interconnection agreements through use of an advice notice process. Under the proposed procedures, a carrier submitting an interconnection agreement for Commission approval would submit the original and two copies of the Agreement

along with an original and two copies of an advice notice. The carrier would serve copies of the advice notice on the New Mexico Attorney General and either publish the advice notice once in a newspaper or post the advice notice to the carrier's Internet website. Within thirty days after the filing of the advice notice, any interested person believing that the Commission should reject an agreement could file a request for rejection with the Commission. Unless the Commission acted to approve or reject the agreement, the agreement would be deemed approved pursuant to 47 U.S.C. Section 252(e)(4) ninety days after it is filed. Report on Workshops at 12-14. In her Report, the Hearing Examiner makes a few comments on the proposed procedures, including suggested changes to the proposed procedures. Id. at 14-15. Qwest filed Comments on the Hearing Examiner's Report in which it does not object to the Hearing Examiner's recommended changes. Qwest Corporation's Comments on Report on Workshops filed on August 1, 2005.

3. The Commission should issue a Notice of Proposed Rulemaking and propose the recommended procedures as amendments to 17.11.18 NMAC ("Interconnection Facilities and Unbundled Network Elements"). The proposed amended rule is attached as Exhibit 1 to this Notice of Proposed Rulemaking.

4. The Commission will accept written comments on the rule proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rule no later than April 7, 2006. Any response comments shall be filed no later than April 28, 2006. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. Any proposed changes to the proposed rule shall be submitted in hard copy. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

5. Written comments or written response comments shall be sent to:
Melanie Sandoval
New Mexico Public Regulation
Commission
Attention: Case No. 05-00104-UT
224 East Palace Avenue, Marian Hall
Santa Fe, NM 87501

Telephone: (505) 827-6968

6. Copies of the proposed rule may be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Meetings," then "Public Notices."

7. The Commission will review all timely submitted written comments and will hold a public comment hearing on the following date and at the following time:

Wednesday, May 10, 2006, beginning at 9:30 a.m. at Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico.

8. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

10. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be June 2, 2006. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rule or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or responses comments, or as allowing the filing of other types of documents in this case.

11. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The proposed amended rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the

proposed amended rule must be filed by April 7, 2006, and response comments must be filed by April 28, 2006.

C. The record in this case, for purposes of 17.2.3.7(B) NMAC ("Ex Parte Communications") shall be closed at 5:00 p.m. on June 2, 2006.

D. A public comment hearing shall be held as provided in this Notice of Proposed Rulemaking.

E. A copy of this Notice, including Exhibit 1, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibit 1, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rule on the Commission's web site.

F. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on March 14, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

**End of Notices and
Proposed Rules Section**

This page intentionally left blank.

NEW MEXICO OFFICE OF THE STATE AUDITOR

NOTICE:

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective March 31, 2006. It will be replaced with the 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective March 31, 2006.

NEW MEXICO OFFICE OF THE STATE AUDITOR

**TITLE 2 PUBLIC FINANCE
CHAPTER 2 AUDITS OF GOVERNMENTAL ENTITIES
PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES**

2.2.2.1 ISSUING AGENCY: Office of the State Auditor, 2113 Warner Circle, Santa Fe, NM 87505-5499 [2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 3-31-06]

2.2.2.2 SCOPE: Agencies as defined by the Audit Act and independent public accountants interested in conducting financial and compliance audits of agencies of the state of New Mexico. [2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3-31-06]

2.2.2.3 STATUTORY AUTHORITY: The Audit Act Section 12-6-12, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978). The Audit Act (12-6-1 through 12-6-14, NMSA 1978) provides the state auditor with authority to conduct financial and compliance audits in accordance with governmental auditing, accounting and financial reporting standards, local, state and federal laws, rules, and regulations. The Audit Act also gives the state auditor the authority to perform special audits of the financial affairs and transactions of an agency, in whole or in part, in situations deemed necessary.

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3-31-06]

2.2.2.4 DURATION :

Permanent [2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 3-31-06]

2.2.2.5 EFFECTIVE DATE: March 31, 2006, unless a later date is cited at the end of a section.

[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 3-31-06]

2.2.2.6 OBJECTIVE: The objective is to establish procedures and requirements for the contracting and conducting of state governmental audits in the state of New Mexico.

[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3-31-06]

2.2.2.7 DEFINITIONS:

A. "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity listed in Subsections A through C of Section 12-6-2, NMSA 1978.

B. "Auditor" means state auditor or independent public accountant.

C. "AICPA" means American institute of certified public accountants.

D. "CFR" means code of federal regulations.

E. "CPE" means continuing professional education.

F. "COSO" means committee on sponsoring organizations of tread-way commission.

G. "DFA" means department of finance and administration.

H. "FCD" means financial control division of the department of finance and administration.

I. "FDIC" means federal deposit insurance corporation.

J. "FDS" means financial data schedule.

K. "GAAP" means accounting principles generally accepted in the United States of America.

L. "GAGAS" means generally accepted governmental auditing standards.

M. "GASB" means governmental accounting standards board.

N. "GAAS" means auditing standards generally accepted in the United States of America.

O. "GSD" means general services department.

P. "HED" means higher education department.

Q. "HUD" means U.S. department of housing and urban development.

R. "IPA" means independent public accountant.

S. "IRC" means internal revenue code.

T. "NCUSIF" means national credit union shares insurance fund.

U. "NMAC" means New Mexico administrative code.

V. "NMSA" means New Mexico statutes annotated.

W. "Office" means office of the state auditor.

X. "OMB" means office of management and budget.

Y. "PED" means public education department.

Z. "PHA" means public housing authority.

AA. "REAC" means real estate assessment center.

BB. "REC" means regional education cooperative.

CC. "RSI" means required supplemental information.

DD. "State auditor" means the elected state auditor of the state of New Mexico, personnel of his office designated by him or independent auditors designated by him.

EE. "SAS" means statement on auditing standards.

FF. "UFRS" means uniform financial reporting standards.

GG. "U.S. GAO" means U.S. general accounting office.

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3-31-06]

2.2.2.8 THE AUDIT CONTRACT:

A. Section 12-6-3, NMSA 1978, (Annual and Special Audits) mandates that: (1) the financial affairs of every agency be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him, or by independent auditors approved by him; (2) the comprehensive annual financial report for the state be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by inde-

pendent auditors approved by him; (3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. Section 12-6-14 NMSA 1978 (Contract Audits) states that "the state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however that an agency subject to oversight by the state department of public education or the commission on higher education shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section." Section 61-28B-13, the 1999 Public Accountancy Act states, "A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act [61-28B-1 to 61-28B-29 NMSA 1978] in order to provide attest services." Only firms that are registered and in good standing with the board shall audit financial statements. IPAs shall submit a firm profile to the state auditor. Firms are required to notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have **submitted a complete and correct** firm profile and who have complied with all the requirements of this rule including:

(1) Section 2.2.2.14 NMAC, continuing education and quality control requirements;

(2) Subsection I of 2.2.2.8 NMAC, independence requirements; and

(3) For an IPA who has previously audited agencies under this rule, they must have previously complied in the past with:

(a) Section 2.2.2.9 NMAC, report due dates; and

(b) Section 2.2.2.13 NMAC, review of audit reports and working papers, of this rule.

B. The state auditor shall notify each agency, in writing, whether the audit is to be conducted by the state auditor or an IPA.

C. If the audit is to be conducted by an IPA, the agency shall comply

with the following procedures to obtain audit services:

(1) It is unnecessary for the agency to include a copy of the audit rule 2006 when mailing requests for proposals to IPAs because it is posted on the state auditor's website at www.saonm.org. The agency shall identify all elements or services to be solicited upon receipt of notification, and request quotations or proposals for each identifiable element:

(a) financial statement audit;

(b) federal single audit;

(c) financial statement preparation;

(d) other nonaudit services like depreciation schedule dates; and

(e) other (i.e., housing authority, charter school, foundations and other component units).

(2) Audit services costing **no more than \$30,000 excluding gross receipts tax** should be considered small purchases. The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. Senate Bill 344 was signed into law March 6, 2006, and requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency on the date the contractor signs the contract. A multi-year proposal (not to exceed three years) exceeding \$30,000 for all three years is not considered a small purchase.

(3) For audit services costing **over \$30,000 excluding gross receipts tax**, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (13-1-1 to 13-1-199 NMSA 1978); New Mexico general services department (GSD) rule 1.4.1 NMAC, *Procurement Code Regulations*, if applicable; and New Mexico department of finance and administration (DFA) rule 2.40.2 NMAC, *Governing the Approval of Contracts for the Purchase of Professional Services*. Senate Bill 344 was signed into law March 6, 2006, and requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency as part of the competitive sealed proposal. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with procurement requirements stated in the federal office of management and budget's, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, (OMB A-102 Common Rule). Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, *Uniform Administrative Requirements for Grants*

and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(4) In accordance with Section 13-1-150 NMSA 1978 (Multi-term Contracts), the agency may, and is strongly encouraged to, request a multi-year proposal to provide services, not to exceed a term of **three** years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the **same price, terms and conditions as stated on the original proposal**. Exercising the option to extend must be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to extend or the state auditor disapproves the recommendation for renewal, the agency shall use the procedures in Paragraphs (2) and (3) of Subsection C of 2.2.2.8 NMAC to solicit services.

(5) Per Section 1 subsection F of Senate Bill 344, a solicitation or proposed award for a proposed contract shall be canceled or a contract that is executed is void if: a prospective contractor fails to submit a fully completed campaign contribution disclosure statement; or if a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process. The agency shall evaluate all competitive sealed proposals or quotations received pursuant to Paragraphs (2) and (3) of Subsection C of 2.2.2.8 NMAC using a two-step evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., should be included in the IPA selection process. Each IPA shall initially be assigned evaluation points on the basis of experience and qualifications. Then each IPA shall be assigned evaluation points on the basis of cost. The IPA firm receiving the most total evaluation points should be selected as the agency IPA. The agency shall use the evaluation form attached to this rule as Appendix B to document this process.

(6) After completing the evaluations for each IPA, and making the IPA selection, each agency shall submit the information listed below to the state auditor on or before May 31, together with its IPA recommendation. (Agencies with a fiscal year end other than June 30 must use a due date 30 days before the end of the fiscal year).

(a) A cover letter indicating the name of the firm being recommended, the oversight agency approval signature, and an indication of whether the proposal is "annu-

al" or "multi-year";

(b) The fully completed and signed evaluation form for the IPA being recommended. If you are in year 2 or 3 of a multi-year proposal, submit a copy of part II of the evaluation form from the previous year; and

(c) A list of professional services contracts the agency had with any IPA on the state auditor's approved list during the previous calendar year up until the date of submission, the contract date, contract amount, including a description of the services provided.

(d) Agencies that are subject to the oversight of the state public education department (PED) or the higher education department (HED) have the additional requirement of submitting their IPA recommendation to PED or HED for approval prior to submitting the recommendation to the state auditor (Section 12-6-14, NMSA 1978). An agency may use the sample cover letter in Appendix A to document the required oversight agency approval.

(7) The state auditor may notify the appropriate oversight agency when an agency has failed to submit a timely auditor recommendation.

(8) If the agency fails to make a recommendation by the deadline, the state auditor may conduct the audit.

(9) Per Section 12-6-14, NMSA1978, "The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit."

(10) The agency shall retain all procurement documentation, including completed evaluation forms, for five years.

(11) In the event the agency's recommendation is not approved by the state auditor, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation. During this process, whenever a recommendation is not approved, the agency may petition the state auditor, within 15 days or prior to June 1, (whichever comes first) for reconsideration, wherein the petitioner presents evidence in support of its recommendation. The state auditor will set the time and place for an informal administrative hearing in a timely manner with consideration given the petitioner's circumstances.

D. The state auditor will use **discretion** and may not approve:

(1) an audit contract recommendation that does not serve the best interest of

the public or the agency because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) the IPA has conducted the audit of the same agency for six consecutive years. The IPA shall not conduct the agency audit for a two-year period after conducting the agency audit for a period of six consecutive years;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report;

(e) unreasonably high or low cost to the agency;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the Procurement Code or this rule; or

(h) any other reason determined by the state auditor to be in the best interest of the state of New Mexico;

(2) audit contract recommendations of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed nonaudit services for an agency without prior approval of the state auditor;

(e) performed nonaudit services under a separate contract for services that may be disallowed by GAGAS independence standards. (See Subsection I of 2.2.2.8 of NMAC);

(f) failed to respond, in an acceptable manner, to an audit report or working paper review;

(g) indicated a lack of independence in fact or appearance;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) has not adhered to external quality control review standards as defined by GAGAS and Subsections B and C of 2.2.2.14 NMAC; or

(j) otherwise, in the opinion of the state auditor, shown himself or herself to be unfit to be awarded a contract;

(3) any audit which the state auditor decides to perform himself or with contracted IPAs [consistent with the October 6, 1993 stipulated order *Vigil v. King* No. SF 92-1487(C)], and pursuant to Section 12-6-3 NMSA 1978 (Annual and Special Audits), even if the agency was previously designated for audit by an IPA.

E. The state auditor shall provide audit contract forms which must be used by the agency. **Only** forms provided by the **state auditor** will be accepted and

shall:

(1) be completed and returned with the number of required copies **within fifteen (15) calendar days** as stated in the approval letter of IPA selection;

(2) bear original signatures;

(3) have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) for all state agencies whose contracts are approved through DFA's contracts office, prior to submission to the state auditor; and

(4) include the amount for each portion of the audit which covers the elements or services as well as the portion of the audit which covers federal funds.

F. The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with risk assumed. The IPA must provide to the state auditor, prior to expiration, updated insurance information.

G. A breach of any terms of the contract shall be grounds for immediate termination of the contract. **The injured party may seek damages for such breach from the offending party.** Any IPA who knowingly makes false statements, assurances, or disclosures will be disqualified from conducting audits of agencies in New Mexico.

H. The IPA shall notify the agency and the state auditor, **in writing**, of any changes in staff assigned to perform the audit. The IPA must update the firm profile to reflect the staffing changes. The IPA shall not subcontract any portion of the services to be performed under the audit contract without the **prior written approval** of the state auditor. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC. The audit contract shall specify subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid. See appendix F for the applicable form.

I. The **Government Auditing Standard 2003 Revision** general standard related to independence is: "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, should be **free both in fact and appearance from personal, external, and organizational impairments to independence.**" (GAGAS 3.03) The standard describes two overarching principles an audit organization must consider before agreeing to perform nonaudit services in order to avoid situations that could lead reasonable third parties with

knowledge of the relevant facts and circumstances to conclude that the auditor is not independent in conducting audits. Audit organizations should not provide nonaudit services that involve performing management functions or making management decisions and they should not audit their own work or provide nonaudit services in situations where the nonaudit services are significant/material to the subject matter of the audit. (GAGAS 3.13)

(1) This GAGAS standard on auditor independence was implemented early by the state auditor and applied to all New Mexico audits covered by the Audit Act effective for fiscal years ending June 30, 2002, and thereafter.

(2) This standard places responsibility on each auditor and the audit organization to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The following is substantially an excerpt from the AICPA fact sheet that summarized the key provision of the GAGAS standards.

(a) The state auditor **will not** approve any contract for nonaudit services to be provided by the same IPA who performs the agency's annual audit for the following services: maintaining or preparing the audited agency's basic accounting records; taking responsibility for basic financial or other records that the audit organization will audit; posting transactions (whether coded or not coded) to the agency's financial records or to other records that subsequently provide data to the agency's financial records; recommending a single individual for a specific position; conducting an executive search or a recruiting program for the audited agency; and operating or supervising the operation of the agency's information technology system; or preparing indirect cost proposals or cost allocation plans.

(b) Consideration and performance of nonaudit services that do not violate the two overarching principles shall be documented by the audit firm in accordance with the requirements of GAGAS 3.17. See also the GAO, *Government Auditing Standards Answers to Independence Standard Questions*, Question 46, that **requires documentation of the safeguards** when an audit firm prepares the trial balance, financial statements and/or notes and then also performs the audit.

(c) The state auditor **may** approve a contract for the following "nonroutine" nonaudit services to be provided by the same IPA who performs the agency's annual audit in circumstances where the **two overarching principles (above) are not violated and the seven required safeguards are met**. Safeguard (1) requires the

IPA to document its consideration of the nonaudit service, and document its rationale that providing the nonaudit service does not violate the two overarching principles. Safeguard (2) requires the IPA to establish and document an understanding with the audited agency regarding the objectives, scope of work, and product or deliverables of the nonaudit service, before performing the nonaudit services. The IPA should also document an understanding with management that management is responsible for the substantive outcomes of the work. Safeguard (3) requires the IPA to preclude personnel who provided the nonaudit services from planning, conducting, or reviewing audit work related to the nonaudit service. (There is an exemption from this safeguard when the nonaudit services are the preparation of a trial balance, draft statements, and notes from appropriate books and records that balance, per Question 46 of the GAO, *Government Auditing Standards Answers to Independence Standard Questions*). Safeguard (4) precludes the IPA from reducing the scope and extent of the audit work beyond the level that would be appropriate if the nonaudit work was performed by another unrelated party. Safeguard (5) requires the IPA's quality control system for compliance with independence requirements to include policies and procedures to assure consideration of the effect on the ongoing, planned, and future audits when deciding whether to provide nonaudit services and a requirement to have the understanding with management of the audited agency documented. The understanding should be communicated to management in writing and can be included in the engagement letter. Documentation must specify management's responsibility for the nonaudit service, management's qualifications to conduct the required oversight, and that management's responsibilities were performed. Safeguard (6) requires that in cases where nonaudit services by their nature impair the audit organization's ability to meet either or both of the overarching principles for certain types of audit work, the audit organization should communicate to management of the audited agency, before performing the nonaudit service, that the audit organization would not be able to perform subsequent audit work related to the subject matter of the nonaudit service. Safeguard (7) requires that for audits selected in the peer review, all related nonaudit services should be identified to the audit organization's peer reviewer and the related safeguard documentation made available for peer review.

(i) Basic accounting services that **may** be allowed: (a) preparing draft financial statements based on management's chart of accounts and trial balance and any adjusting, correcting, and closing

entries that have been approved by management; preparing draft notes to the financial statements based on information determined and approved by management; (b) preparing a trial balance based on management's chart of accounts; (c) maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset; and/or (d) proposing adjusting and correcting entries that are identified during the audit so long as management makes the decision on accepting the entries.

(ii) Payroll services that **may** be allowed are: (a) computing pay amounts for the agency's employees based on agency maintained and approved time records, salaries or pay rates, and deductions from pay; (b) generating unsigned payroll checks; and (c) transmitting client approved payroll to a financial institution provided management has approved the transmission and limited the financial institution to make payments only to previously approved individuals.

(iii) Preparing routine tax filings in accordance with federal tax laws and rules and regulations **may** be allowed.

(iv) Human resource services that **may** be allowed to assist management in its evaluation of potential candidates are limited to activities such as: (a) serving on an evaluation panel to review applications; and (b) interviewing candidates to provide input to management in arriving at a list of best qualified applicants to be provided to management.

(v) Providing information technology services **may** be allowed if limited to services such as advising on system design, system installation, and system security if management acknowledges responsibility for the design, installation, and internal control over the agency's system and does not rely on the auditor's work as the primary basis for determining: (a) whether to implement a new system; (b) the adequacy of the new system design; (c) the adequacy of major design changes to an existing system; or (d) the adequacy of the system to comply with regulatory or other requirements.

(vi) Providing appraisal or valuation services **may** be allowed if limited to services such as: (a) reviewing the work of the agency or a specialist employed by the agency where the agency or specialist provides the primary support for the balances recorded in financial statements or other information that will be audited; or (b) valuing an agency's pension, other post-employment benefits, or similar liabilities provided management has determined and taken responsibility for all significant assumptions and data.

(vii) Contracts for gathering and reporting unverified external or third-party data to aid legislative and administrative decision-making **may** be allowed.

(viii) Services advising an agency regarding its performance of internal control self-assessments **may** be allowed.

(ix) Services assisting a legislative body by developing questions for use at a hearing **may** be allowed.

(3) In accordance with Section 12-6-12, NMSA 1978, the agency and IPA shall not enter into any financial, special audit or any other nonaudit service contract without the **prior written approval** of the state auditor. The contract fee, start and completion date and scope of services to be performed should be included when submitting nonaudit service contracts to the state auditor for approval. The agency and IPA must provide the state auditor with a copy of any report generated.

J. The state auditor will approve progress and final payments as follows:

(1) Section 12-6-14, NMSA 1978 (Contract Audits) also provides that "no payment of public funds may be made to an independent auditor unless a contract is entered into and approved."

(2) Section 12-6-14, NMSA 1978 (Contract Audits) provides that the state auditor may approve progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to 79% **do not** require state auditor approval, providing the agency certifies receipt of services. The **agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed** prior to making the 79% payment. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 80% to 90% **do** require state auditor approval after being approved by the agency.

(4) The state auditor may allow only the first 50% of progress payments to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC.

(5) Section 12-6-14, NMSA 1978 (Contract Audits), provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has stated, in writing, that the audit has been conducted in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be stated

in the letter accompanying the release of the report to the agency. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 B, NMSA 1978, and this rule and will be reported as an audit finding of the agency. Violation of this statute may subject the auditor to removal from the list of approved auditors.

K. Financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts **rounded to the nearest dollar**.

(2) **The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records**, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the deadline imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA should provide the adjusting entries to the agency reconciling the report to the books.

(4) If the IPA prepared the financial statements, in conformance with Subsection I of 2.2.2.8 NMAC for management's review and approval, including documenting the safeguards as required by GAGAS 3.17, the fact that the auditor prepared the financial statements must be disclosed in the concluding paragraphs of the audit findings and recommendations section of the audit report. This is not a finding if the applicable independence standards described in Subsection I of 2.2.2.8 NMAC were followed.

L. Working papers (SAS 96 and SAS 103 that can be early implemented prior to FY 07):

(1) The working papers are to be retained for a minimum of five years (per SAS 103 paragraph 32) from the date shown on the opinion letter of the audit report, or longer if requested by the federal oversight or cognizant agency or the state auditor. The state auditor shall have access to the working papers at the discretion of the state auditor.

(2) When requested by the state auditor, all working papers or clear legible copies shall be delivered to the state auditor.

(3) The working papers of a predecessor IPA are to be made available to a successor IPA in accordance with SAS No. 84. Any costs incurred will be borne by the requestor. If the successor IPA finds that the predecessor IPA's working papers do not comply with applicable auditing standards

and this rule, or do not support financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts; and/or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountability board for possible licensure action.

M. Auditor communication:

(1) The **Government Auditing Standards 2003 Revision** Sections 4.6 through 4.13 provide guidance regarding auditor communication requirements in financial audits performed in accordance with GAGAS. GAGAS broadens the parties with whom auditors must communicate during the planning stages of the audit. Section 4.6 states "Auditors should communicate information regarding the nature, timing, and extent of planned testing and reporting and the level of assurance provided **to officials of the audited entity and to the individuals contracting for or requesting the audit.**" Auditors should specifically communicate this information during the planning stages of a financial audit:

(a) any potential restriction of the auditors' report;

(b) the nature of any additional testing of compliance and internal control required by laws and regulations or otherwise requested like:

(i) planned testing of compliance with applicable state and federal laws and regulations shown in Subsections H and I of 2.2.2.10 NMAC;

(ii) planned tests of compliance with laws, regulations, and internal control related to single audit requirements that exceed the minimum GAGAS requirements (GAGAS 4.12); or

(iii) any agreed upon procedures for example the HUD requirement for a separate attestation engagement required in Subparagraph (c) of Paragraph (5) of Subsection B of 2.2.2.12 NMAC.

(c) The communication should explain whether the auditors are planning on providing opinions on compliance with

laws and regulations and internal control over financial reporting. Such tests are not usually sufficient in scope to opine on compliance or internal control over financial reporting, but contribute to the evidence supporting the auditors' opinion on the financial statements.

(d) To fulfill these communication requirements, IPAs shall prepare a **written and dated engagement letter** during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a photocopy of the signed letter as part of the audit documentation (GAGAS 4.07). The appropriate officials of the agency may include:

- (i) the head of the audit entity;
- (ii) the audit committee or board of directors or equivalent oversight body;
- (iii) the individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer. (GAGAS 4.08)

(e) In situations where auditors are performing the audit under a contract with a party other than the officials of the audited entity, or pursuant to a third party request, auditors should also communicate with the individuals contracting for or requesting the audit, such as contracting officials or members or staff of legislative committees. (GAGAS 4.09)

(2) Within 10 days of the entrance conference, the IPA shall submit to the state auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which will facilitate meeting the audit due date in Subsection A of 2.2.2.9 NMAC.

(3) All communication with management and the agency oversight officials regarding any instances of noncompliance and/or internal control weaknesses must be communicated in writing. The auditor should obtain **responses in writing** to facilitate effective communication. Any instances of noncompliance and/or internal control weaknesses that are not eliminated after clear communication with management must be included as findings per Section 12-6-5, NMSA 1978. Separate management letter comments shall **not** be used as a substitute for such findings.

(4) Financial control division of the department of finance and administration mandates that each state agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the

deadline cannot extend beyond December 15. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems. The financial control division of the department of finance administration must be sent a photocopy of the letter.

N. Amendment of any of the contract provisions will be made upon forms used in the normal course of business by the agency. **Delivery dates are not subject to amendment.** Work performed beyond the original proposed work, such as preparation of: financial statements, for management's review and approval; supporting schedules; or special procedures, shall be allowed only in compliance with the auditor independence requirements of Subsection I of 2.2.2.8 NMAC and will be negotiated and compensated only upon amendment of the original contract if they were not specifically included in the original contract. **All contract amendments must be approved by the state auditor.** The audit engagement letter shall not be interpreted as amending the contract. No fee contingencies will be included in the engagement letter. The original contract and the contract amendments approved by the state auditor constitute the entire agreement. Any amendments to the contract must be in compliance with the New Mexico Procurement Code, Sections 13-1-1 to 13-1-199, NMSA 1978.

O. The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed or for any other reason and perform the audit entirely or partially with IPAs contracted by him [consistent with the October 6, 1993, stipulated order *Vigil v. King* No. SF 92-1487(C)]. The notice of termination of the contract will be in writing. [2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 3-31-06]

2.2.2.9 REPORT DUE DATES:

A. The auditor shall deliver the annual audit report to the state auditor on or before the date specified in the audit contract. The report should be submitted with the following: a copy of the dated signed engagement letter if not previously submitted; a copy of the signed management representation letter; a list of the passed adjustments clearly labeled "passed

adjustments" (or memo stating there are none); and a copy of the completed state auditor preliminary review guide (available at www.saonm.org). The checklist should reference applicable page numbers in the audit report and be signed by the person completing the review guide. **A report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed management representation letter, the passed adjustment, and the completed preliminary review guide are also submitted to the office.** If a due date falls on a weekend or holiday, the audit report is due the following workday. If the report is mailed to the state auditor, it should be post marked no later than the due date to be considered filed timely. **The state auditor will grant no extensions of time to deliver the audit reports. As soon as the auditor becomes aware that an agency's financial records are incomplete or require adjustment that will make the audit report late, the auditor shall notify the state auditor of the situation in writing. The office will then notify the appropriate oversight agency. At the time the audit report is due, if the agency's financial records are still incomplete or require significant adjustment, the auditor shall issue the audit report with the appropriate opinion rendered, no later than the due date specified by this rule.** The auditor shall not allow the agency additional time to complete its accounting function when such an allowance will cause the audit to be late. The IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to assure an unqualified opinion.

(1) The audit report due dates are as follows:

(a) regional education cooperatives, cooperative educational services and independent housing authorities **September 30;**

(b) hospitals and special hospital districts **October 15;**

(c) school districts, counties, and higher education **November 15;**

(d) municipalities, special districts, and local workforce investment boards **December 1;**

(e) councils of governments **December 15;**

(f) state agency reports are due no later than **60 days** after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division mandates that

each agency, with the help of its independent auditor, identify a schedule of audit deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline **cannot extend beyond December 15**. (Section 12-6-3 C, NMSA 1978)

(g) Agencies with a fiscal year-end other than June 30 must submit the audit report no more than **5 months after the fiscal year-end**; and

(h) separate audit reports (if applicable) for component units (e.g., housing authorities, charter schools, hospitals, foundations, etc.) are due the **same date the primary government's audit report is due**.

(2) Audit reports for agencies that have submitted auditor recommendations after the due dates specified above, will be due 30 days after the auditor recommendation has been approved by the state auditor.

(3) If an audit report is not delivered on time to the state auditor, the auditor must include this instance of noncompliance with the Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. The finding should be reported as an instance of noncompliance in the agency's internal controls over financial reporting.

B. As in any contract, both parties can and are encouraged to negotiate a delivery date prior to the regulated due date specified in Subsection A of 2.2.2.9 NMAC. No delivery date, however, may exceed the "no later than" due date specified in Subsection A of 2.2.2.9 NMAC.

C. **All audit reports must be paginated.** The IPA shall deliver to the state auditor one of the following **finalized** versions of the report: a hard copy; an e-mail copy; or the required number of copies indicated in the audit contract on or before the delivery due date. Unfinished reports or erroneous reports will not satisfy this requirement. **The IPA should review the report using the preliminary review guide available on the website, prior to submitting the report to the office.** Along with the audit report the IPA shall submit to the State Auditor a copy of: the signed management representation letter (SAS AU 333); the passed audit adjustments (or memo stating there are none) [Paragraph (2) of Section J of 2.2.2.10 NMAC]; and the signed and completed preliminary review guide referencing appropriate report page numbers. The preliminary review guide form is available at www.saonm.org. If a hardcopy or an e-mail copy of the report is submitted, once all deficiency comments have been corrected by the IPA and the state

auditor review staff indicates it is O.K. to print the report, the required number of hardcopies must be provided to the state auditor. The IPA shall deliver to the agency, the number of copies of the audit report indicated in the audit contract **only** after the state auditor has officially released the audit report with a "release letter." Release of the audit report to the agency prior to it being officially released by the state auditor will result in an audit finding. Every member of the agency's governing authority shall receive a copy of the audit report.

D. The agency and IPA may agree to a contract provision that unjustified failure to meet delivery requirements by either party to the contract may result in liability for a specified amount of liquidated damages from the offending party.

E. IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the state auditor.

[2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 3-31-06]

2.2.2.10 GENERAL CRITERIA:

A. Audit scope:

(1) The audit shall cover the whole reporting agency, the primary government and any component units of the primary government.

(a) Entities must be included as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASB 14 paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASB 39 paragraphs 5 and 6). The primary government and/or its auditors must determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government, as defined by GASB Statements No. 14 and No. 39. The flowchart at GASB 14 paragraph 132 is helpful. All agencies that meet the criteria of GASB 14 or GASB 39 to be a component unit of the primary government **must be included in the financial reports of the primary government by discrete presentation unless otherwise approved by the state auditor.** Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government. (GASB 14 paragraphs 44 through 50). Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested by the agency, in writing, from the state auditor in order to present a component unit as other than a discrete compo-

nent unit. The request for exemption must include evidence supporting the request. The approval of the state auditor for the exemption is required prior to issuing the report. **This exemption must be requested annually.**

(b) If a primary government has no component units, that fact should be disclosed in the summary of significant accounting policies description of the reporting entity. If the primary government has component units that are not included in the financial statement due to materiality that fact must be disclosed. However, if the primary government is a school, college, or university, Section 6-5A-1 NMSA 1978, requires all 501(c)3 component unit organizations with a gross annual income in excess of \$100,000, to receive an audit. Such component units cannot be excluded from the audit based on the "materiality" criterion.

(c) **The state auditor requires the component unit(s) to be audited by the same auditor who audits the primary government.** Requests for exemption from this requirement must be submitted **by the agency** to the state auditor in writing. **This exemption must be requested annually.** If the request to use a different auditor for the component unit is approved, the following requirements must be met:

(i) the primary auditor must agree to use the information from the work of the component unit auditor;

(ii) the component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants;

(iii) the bid and auditor selection processes must comply with the requirements of this rule;

(iv) the office of the state auditor standard contract form must be used;

(v) all component unit findings must be disclosed in the primary government's audit report; and

(vi) any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(d) The level of planning materiality required by the state auditor for **component units** is at the **individual fund level**. College and university component units have a different materiality level. See Paragraph (3) of Subsection E of 2.2.2.12 NMAC.

(e) Supplemental information (SI) pertaining to component units included in the scope of the audit and therefore the auditor opinion (as allowed by SAS 98) are:

(i) component unit fund financial statements and related combining statements if separately issued financial

statements of the component units are not available (AAG-SLV 3.20); and

(ii) individual fund budget comparison schedules if separately issued financial statements are not available, when a legally adopted budget exists for a fund; the office interprets a "legally adopted budget" to exist any time an entity receives federal funds, state funds, or any other "appropriated" funds.

(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the statements and schedules shown below.

(a) The level of planning materiality required by the state auditor is at the **individual fund level**. The state auditor requires that the budget comparison statements be audited and be included as part of the basic financial statements whenever possible and consistent with GASB 34 footnote 53 and AAG-SLV 11.13. The scope of the audit includes the following statements and schedules which the auditor is required to audit and give an opinion on:

(b) The basic financial statements consisting of:

(i) the government-wide financial statements;

(ii) fund financial statements;

(iii) budget comparison statements (for **only** the general fund and major special revenue funds when the budget information is available on the same fund structure basis as the GAAP fund structure); and

(iv) notes to the financial statements.

(c) The auditor must audit the following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.53). RSI budgetary comparison schedules for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (***GASB Statement No. 41, Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34***).

(d) The auditor must audit the following supplemental information, if applicable, and include it in the auditor's opinion:

(i) component unit fund financial statements and related combining statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20);

(ii) combining financial statements; and

(iii) individual fund budget comparison statements for remaining funds that have a legally adopted budget (**including major funds other than gen-**

eral fund and special revenue funds, non-major governmental funds, and proprietary funds) that did not appear as basic financial statement budget comparisons for the general fund or major special revenue funds, or as required supplemental information (RSI) as described above.

(e) The auditor should apply certain limited procedures to the following RSI (if applicable) and report deficiencies in, or the omission of, required information in accordance with the requirements of SAS AU 558.06:

(i) the management discussion and analysis (MD&A);

(ii) RSI data required by GASB Statements 25 and 27 regarding pension plans and administered by defined benefit pension plans; and

(iii) schedules derived from asset management systems (GASB 34 paragraphs 132 and 133).

B. Legislation regarding budget adjustment requests (BARs) prevents or restricts many budget transfers or increases. The IPA shall satisfy himself that these restrictions are not being violated by direct payment or other unauthorized transfers.

C. Legislation can designate a fund as reverting or non-reverting. The IPA must review the law which appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted, and to whom. The law will also indicate the deadline for the required reversion. Appropriate audit procedures must be performed to determine compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes should fully disclose the reverting versus non-reverting nature of an appropriation. The financial statements must disclose the specific legislation that makes a fund or appropriation non-reverting. If non-reverting appropriations are commingled with reverting appropriations, the notes to the financial statements must disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions see Subsection A of 2.2.2.12 NMAC and the DFA white paper "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis."

D. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) Generally Accepted **Government Auditing Standards** (GAGAS) issued by the U.S. general accounting office, latest edition and amendments;

(2) **Codification of Statements on**

Auditing Standards (SAS) issued by the AICPA, latest edition (see Appendix D);

(3) **OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations (June 2003 revision) which raised the threshold for Single Audit from \$300,000 to \$500,000 of federal expenditures;**

(4) SOP 98-3, **Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards**, latest edition;

(5) **AICPA Audit and Accounting Guide, State and Local Governments** (2005);

(6) 2.2.2 NMAC, **Requirements for Contracting and Conducting Audits of Agencies**, latest edition.

E. The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the **Codification of Governmental Accounting and Financial Reporting Standard (GASB)**, latest edition (see Appendix C). Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB and other applicable pronouncements issued by the financial accounting standards board (FASB).

F. IPAs who perform government audits are expected to maintain professional libraries with current editions of the above publications. The audit guides published by Practitioners Publishing Company (PPC) are practice aides only and are not considered to be authoritative.

G. State compliance: An IPA shall identify significant state statutes and rules and regulations applicable to the governmental agency under audit and perform tests of compliance. In addition to those significant state statutes, rules and regulations identified by the IPA, the following state statutes and constitutional provisions will be tested:

(1) Procurement Code (13-1-1 to 13-1-199 NMSA 1978);

(2) Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978);

(3) Personnel Act (10-9-1 to 10-9-25 NMSA 1978);

(4) Public Money Act (6-10-1 to 6-10-63 NMSA 1978);

(5) Public School Finance (22-8-1 to 22-8-42 NMSA 1978);

(6) Investment of Public Money (6-8-1 to 6-8-21 NMSA 1978);

(7) Public Employees Retirement Act (10-11-1 to 10-11-38 NMSA 1978) [auditors should test to ensure 100% of payroll is reported to PERA; this is a new PERA requirement. PERA membership is mandatory under the PERA Act, unless membership is specifically excluded by

statute for: seasonal employees; student employees; certain elected officials who exercise an option to exclude themselves from PERA membership; and employees that participate in a private retirement program paid for by their government employer, that are ERA retirees and PERA retirees who return to work under NMSA 1978, Section 10-11-8, NMSA 1978, Section 10-11-3 (2005)];

(8) Educational Retirement Act (22-11-1 to 22-11-45 NMSA 1978);

(9) Sale of Public Property (13-6-1 to 13-6-4 NMSA 1978);

(10) Anti-Donation Clause (NM Constitution Article IX, Section 14);

(11) Special, Deficiency, and Specific Appropriations (appropriation laws applicable for the year under audit);

(12) Budget Compliance (6-3-1 to 6-3-25 NMSA 1978);

(13) Lease Purchase Agreements (6-6-11 to 6-6-12, Montano v. Gabaldon, 108 NM 94, 766 P.2d 1328, 1989);

(14) 2.20.1.1 to 2.20.1.18 NMAC, *Accounting and Control of Fixed Assets of State Government (updated for GASB 34 as applicable)*;

(15) 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies*;

(16) Article IX of the State Constitution limits on indebtedness;

(17) Governmental Conduct Act (10-16-1 to 10-16-18 NMSA 1978);

(18) Records, Legal Notices and Other Obsolete County Records (14-1-8 NMSA 1978); and

(19) Laws of 2005, Chapter 33, Section 3, Subsection L states, "Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9.1 NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2005 may be expended for payment of agency-issued credit card invoices."

H. Federal compliance:

(1) The following government pronouncements establish requirements and give guidance for "Yellow Book" and/or single audits.

(a) **Single Audit Act Amendments of 1996**; (Public Law 104-156);

(b) *Generally Accepted Government Auditing Standards* (GAGAS) issued by the U.S. General Accounting Office, latest edition and amendments;

(c) OMB Circular A-21, *Cost Principles for Educational Institutions*, as revised May 10, 2004;

(d) OMB Circular A-87, *Cost Principles for State, Local, and Indian*

Tribal Governments, effective June 9, 2004;

(e) OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, as revised October 9, 1994 and amended August 29, 1997;

(f) OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, as revised November 19, 1993 and further amended September 30, 1999;

(g) OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, (June 27, 2003 revision);

(h) OMB Circular A-133, *Compliance Supplement*, latest edition; and

(i) OMB *Catalog of Federal Domestic Assistance* (CFDA), latest edition;

(2) IRS employee income tax compliance issues - noncompliance with these IRS requirements requires a current year audit finding.

(a) Employee fringe benefits are presumed by the IRS to be income to the employee unless they are specifically excluded from income by the tax code. Any employee fringe benefits not excluded from income by the tax code must be reported on the employee's W-2. Examples of such fringe benefits could be: meal allowances paid to employees for meals away from home when overnight travel is not involved; discounted housing like school district teacherages, dues for membership in clubs organized for business, pleasure, recreation, or other social purpose (except Rotary and Kiwanis Club); cash and non-cash awards, and employee insurance benefits for dependents who do not meet the IRS definition of a "dependent." Personal use of a government agency vehicle is always taxable income to the employee unless the vehicle is a qualified non-personal use vehicle [Rev. 1.274-5T(k)(3)] provided to the employee as a "working condition fringe benefit."

(i) Examples of qualified non-personal use vehicles are: clearly marked police and fire vehicles; unmarked law enforcement vehicles (officer must be authorized to carry a firearm and have arrest authority); ambulance or hearse; vehicle with gross weight over 14,000 lbs.; 20 passenger bus and school bus; tractor and other farm equipment; and delivery truck with driver seating only.

(ii) The value of commuting and other personal use of a "non-qualified vehicle" must be included on the employee's W-2. There are three rules the IRS allows to be used for valuing personal

use of an employer's vehicle: automobile lease valuation rule; cents-per-mile rule; and the commuting rule (\$3 per day). For more detailed information regarding valuation of personal use of vehicles see IRS Pub. 15-B, Reg 1.61-21.

(b) Personal service contractors (1099 employees) who are retired employees of the governmental agency they worked for must be able to meet the IRS tests to qualify as contract labor. In the event a personal services contractor is in substance an employee, the governmental agency could be liable for the employee's share of FICA and employer FICA match on the contract payments. Public employees retirement association (PERA) could expect excess retirement payments back. (Section 10-11-8(C) NMSA 1978)

(c) City or county "volunteer firefighters" who are reimbursed when they provide firefighting services on state or federal land have been determined by the IRS to be employees of the respective city or county.

(d) The social security administration now requires all state and local government employers to disclose to all new employees the fact that their job is not covered by social security if they were hired for a position not covered by social security. These employees must sign a statement that they are aware of a possible reduction in their future social security benefit entitlement. See the website at www.socialsecurity.gov/form1945 for the required form and instructions.

(e) For more information regarding these and other IRS issues please contact the federal state and local government specialist with the IRS in Las Cruces, NM at 505-527-6900 ext. 232, or in Albuquerque, NM at 505-837-5554.

I. Audit findings:

(1) Section 12-6-5, NMSA 1978 (Reports of Audits) states each report shall set out in detail, in a separate section, **any violation of law or good accounting practices found by the audit or examination.** Therefore, all findings should be included in the annual audit report. **"There is no level of materiality in government auditing and all violations must be disclosed because 'public monies' are involved."** There is also no level of materiality for reporting findings of component units that do not receive public funds.

(2) *Generally Accepted Government Auditing Standards*, Sections 4.14-4.15, require the "auditors to consider the results of previous audits and attestation engagements and follow up on known significant findings and recommendations that directly relate to the objectives of the audit being undertaken." This follow up includes findings reported in financial, special and

internal audits. In addition to this standard, the IPA will report the status of **all** prior-year findings by reference number (i.e., 03-1, 03-2, 04-1, 05-1) and descriptive title in the audit report as being resolved or repeated in the current-year audit report.

(3) Current-year:

(a) All current-year audit findings shall have a reference number and a short title that identifies the finding (i.e., 06-1, 06-2, 06-3).

(b) A memorandum on potential audit findings should be prepared and submitted to the agency management as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. **Findings are not subject to negotiation** and should comply with good accounting practices. If applicable, the agency should also prepare a corrective action plan. The agency shall respond, in writing, to the IPA's memorandum of findings within 10 workdays. Responses to the audit findings should be included in the audit report. Lack of agency responses within the 10 days does not warrant delay of the audit. If the responses are not received, indicate that they were not received and the reason why after each finding.

(c) Each audit finding (including unresolved prior-year findings) shall specifically state and describe the following:

(i) condition (quantify where possible-number of instances, dollar amounts, etc.);

(ii) criteria (which must include specific reference to the law, regulation, or other guidance that was violated);

(iii) effect;

(iv) cause;

(v) recommendation addressing each condition and cause; and

(vi) agency response (i.e., agency comments and a specific corrective action plan).

(4) Failure to file the audit report by the due date set in 2.2.2.9 NMAC is considered noncompliance with this rule and shall be a current-year audit finding. The finding should be reported as an instance of noncompliance in the agency's internal controls over financial reporting.

(5) If an agency has entered into any professional services contract with an IPA without written state auditor approval, this should be reported as a finding of noncompliance with Subsection I of 2.2.2.8 NMAC.

(6) Component unit audit findings must be reported in the primary government's financial audit report.

(7) A release of the audit report, by the IPA or agency, prior to being officially released by the state auditor is a violation of state statute (Section 12-6-5, NMSA 1978) and will require an additional finding

in the audit report.

(8) When auditors detect deficiencies in internal controls that are not reportable conditions, they must communicate those deficiencies in written findings and refer to the findings in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards (Yellow Book report), in the "internal control" section, by stating something like, "we also noted certain matters that we reported to management in ... findings." (Section 12-6-5, GAGAS 5.16, and Example 4-3 in the AICPA Audit Guide: GAS and Circular A-133 Audits)

(9) When auditors detect immaterial violations of provisions of contracts or grant agreements or abuse, they must communicate them in written findings and refer to those findings in the Yellow Book report on compliance, in the "compliance" section, by stating something like, "We also noted certain additional matters that we reported in ... findings." (GAGAS 5.20 and Section 12-6-5, NMSA 1978)

J. Exit conference and related confidentiality issues:

(1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. If component unit representatives cannot attend the combined exit conference, a separate exit conference must be held with the component unit's governing authority and top management. The exit conference must be held in person, a telephone exit conference will not meet this requirement. The date of the conference(s) and the names and titles of personnel attending must be stated in a concluding paragraph of the audit findings and recommendations section of the audit report.

(2) The IPA shall deliver to the agency a draft audit report (stamped "Draft"), a **list of the "passed audit adjustments,"** and a copy of all of the adjusting entries at the exit conference. The draft audit report shall include the independent auditor's report, a complete set of financial statements, notes to the financial statements, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on compliance and internal control required by government auditing standards and the Single Audit Act. Subsection AA of 2.2.2.10 NMAC, SAS 89 Audit Adjustments, provides an explanation regarding the list of "passed audit adjustments." The agency will have at least ten (10) workdays to review the draft audit report and respond to the IPA regarding any

issues that need to be resolved prior to submitting the report to the state auditor. The audit report shall be delivered to the state auditor on or before the due date specified in Subsection A of 2.2.2.9 NMAC, with copies of the signed management representation letter, the list of "passed audit adjustments," and the completed and signed preliminary review guide with page numbers referenced. **A report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed management representation letter, the passed adjustments, and the completed preliminary review guide are also submitted to the office.**

(3) The audit process will not have been completed at the time of the exit conference. **Neither the IPA nor agency personnel shall release any information to the public relating to the audit at the time of the exit conference or at any other time until the audit report becomes public record.** Agencies subject to the Open Meetings Act (Act) who wish to have a quorum of the governing board present at the exit conference will have to schedule the exit conference during a closed meeting in compliance with the Act in order to avoid disclosing audit information that is not yet public record, in a public meeting.

(a) Pursuant to the Open Meetings Act (10-15-1 to 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public.

(b) Section 12-6-5, NMSA 1978 (Reports of Audits) provides that an audit report does not become a public record, subject to public inspection, until ten business days after it is released by the state auditor to the agency audited.

(c) The attorney general's *Open Meetings Act Compliance Guide* states that if the agency being audited is governed by a public body subject to the Open Meetings Act and where discussion of the report occurs at an exit conference at which a quorum of the members of that body is present, such an exit conference **shall not** be open to the public in order to preserve the confidentiality of the information protected by Section 12-6-5, NMSA 1978.

(d) Once the finalized version of the audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required ten business days waiting period has passed, the audit report **shall** be presented to a quorum of the governing authority of the agency for approval at a public meeting.

K. Possible violations of criminal statutes in connection with financial affairs:

(1) Auditing standards related to fraud have been updated. SAS 99 *Consideration of Fraud in a Financial Statement Audit*, is effective for fiscal peri-

ods beginning on or after December 15, 2002 (FY04). This SAS significantly changes what auditors must do in order to fulfill their responsibility to plan and perform the audit to provide reasonable assurance that the financial statements are free of material misstatement, whether caused by error or fraud (SAS AU Sec. 110.02). There are two types of misstatements of the financial statements, those caused by fraudulent financial reporting and those caused by misappropriation of assets. New procedures are required on every audit and auditors must:

(a) exercise an attitude of professional skepticism (a questioning mind and critical assessment of audit evidence) throughout the entire engagement;

(b) brainstorm as a team about how fraud could occur in the agency;

(c) obtain information needed to identify the risks of material misstatement due to fraud by:

(i) inquiring of management and others within the entity about the risks of fraud;

(ii) considering the results of the analytical procedures performed in planning the audit;

(iii) considering fraud risk factors: incentives/pressures to perpetrate fraud; opportunities to carry out the fraud; or attitudes/rationalizations to justify fraudulent actions;

(iv) considering other information including inherent risks at the individual account balance or class of transaction level;

(d) assess identified risks after taking into account an evaluation of the agency's programs and controls;

(e) respond to the risk assessment results;

(i) in the overall conduct of the audit;

(ii) in the nature, timing, and extent of the auditing procedures to be performed; and

(iii) by performing procedures addressing the risk due to fraud involving management override of controls;

(f) evaluate audit evidence;

(i) assess fraud risk throughout the audit;

(ii) at the end of the audit evaluate whether accumulated results of procedures affect the fraud risk assessment;

(iii) consider whether identified misstatements may be indicative of fraud, and if so evaluate their implications;

(g) communicate about fraud to management, the audit committee, and others (SAS 99 paragraph 79 through 82 and paragraph (3) of Subsection K of 2.2.2.10

NMAC; and

(h) document the auditor's consideration of fraud.

(2) GAGAS 4.17 states that "auditors should design the audit to provide reasonable assurance of detecting material misstatements resulting from violations of provisions of contracts or grant agreements that have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives. If specific information comes to the auditors' attention that provides evidence concerning the existence of possible violations of provisions of contracts or grant agreements that could have a material indirect effect on the determination of financial statement amounts or other financial data significant to the audit objectives, auditors should apply audit procedures specifically directed to ascertain whether violations of provisions of contracts or grant agreements have occurred or are likely to have occurred. Auditors should be alert to situations or transactions that could be indicative of **abuse**, and if indications of abuse exist that could significantly affect the financial statement amounts or other financial data, auditors should apply audit procedures specifically directed to ascertain whether **abuse** has occurred and the effect on the financial statement amounts or other financial data." "Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. ...If indications of possible abuse exist that significantly affect the financial statement amounts or other financial data, the auditors should extend the audit steps and procedures as necessary to (1) determine whether the abuse occurred and, if so, (2) determine its effect on the financial statement amounts or other financial data. Auditors should consider both **quantitative and qualitative factors** in making judgments regarding the materiality of possible abuse and whether they need to extend the audit steps and procedures. ...Auditors are not expected to provide reasonable assurance of detecting abuse."

(3) Every agency and IPA, pursuant to Section 12-6-6, NMSA 1978 (Criminal Violations), shall notify the state auditor immediately, in writing, upon discovery of any possible criminal statute violation in connection with its financial affairs. The notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned. The state auditor will determine whether a special audit is warranted based upon the **written** informa-

tion provided. If warranted, the state auditor will conduct the special audit. The IPA shall not enter into **any financial or special** audit contract unless selected through a process consistent with the Procurement Code and subject to the **prior written approval** of the state auditor. A copy of the report shall be provided to the state auditor.

(4) The state auditor shall immediately report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

L. Compensated absences:

(1) Vacation pay and other compensated absences should be computed in accordance with the requirements of GASB Statement No. 16, *Accounting for Compensated Absences*, and be reported in the financial statements.

(2) The statement of net assets, governmental activities column should report both the current (**amount expected to be paid out over the next year**) and long-term portions of the compensated absence liability because the government-wide financial statements report all liabilities. Per GASB 34 paragraph 31 "liabilities whose average maturities are greater than one year should be reported in two components—the amount **due within one year** and the amount due in more than one year."

(3) The fund financial statements should report the portion of the compensated absence liability that is expected to be liquidated using expendable available financial resources (NCGAS 4 paragraph 5) in the fund responsible to pay for the liability, if the amount is material. Any amount due and payable at the end of the fiscal period should be accrued. (GASB Cod. Sec. C60.111)

(a) State agencies: **The state of New Mexico does not budget in the current year, funds to pay for any portion of the compensated absence liability carried forward from the previous year end.** Those payments are provided for in future budgets. Funds that are not budgeted are not an available financial resource. (NCGAS 1 paragraph 86 and GASB Cod. Sec. C60.111)

(b) Non-state agencies: If the agency does budget funds in the current year to pay compensated absence balances, the portion of the liability that is expected to be liquidated using expendable available financial resources, if material, should be recorded in the fund responsible to pay the liability.

(4) The notes to the financial statements should disclose the accounting treatment applied to compensated absences.

(5) GASB 34 paragraph 119 requires the following disclosures of the agency's long-term compensated absences

(and other long term liabilities) presented in the statement of net assets: beginning and end-of-year balances; increases and decreases shown separately; the portion due within one year; and which governmental funds typically have been used to liquidate the liabilities in prior years.

M. Special revenue funds authority: The authority for creation of special revenue funds must be shown in the audit report (i.e., cite the statute number, executive order, resolution number, or other specific authority) in the divider page or notes to the financial statements.

N. Public monies:

(1) Definition - All monies coming into all agencies i.e., vending machines, fees for photocopies, telephone charges, etc., shall be considered public monies and be accounted for as such. For state agencies, all revenues generated must be authorized by legislation. (Section 6-4-2, NMSA 1978 and MAPS Section 3.3)

(2) Compliance Issues - The auditor should test for compliance with:

(a) The requirements of Sections 6-10-10A and B, NMSA 1978, that county and municipal treasurers deposit money in banks, savings and loan association or credit unions located in their respective counties; and

(b) The requirements of Section 6-10-17, NMSA 1978, that the public official or public board has received a joint safe keeping receipt for pledged collateral from the custodial bank for the collateral delivered by the depository institution.

(3) List of individual deposit accounts and investment accounts required by Section 12-6-5, NMSA 1978; each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union) or state treasurer central accounting system (CAS) fund number;

(b) account name;

(c) type of account (checking, savings, investment);

(d) bank balance of deposits and investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date, as reported in the financial statements.

(4) Pledged collateral:

(a) All audit reports should disclose the collateral requirements in the notes to the financial statements. In addition, there should be a **supplementary schedule** to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S&L) that is a depository for public funds. The schedule should disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, CUSIP number, **fair mar-**

ket value and maturity date. The schedule should also disclose the name of the custodian and the place of safekeeping for all collateral.

(b) If the pledged collateral **for deposits in banks, savings and loan associations, or credit unions**, in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17, NMSA 1978), there should be a finding in the audit report. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union shares insurance fund (NCUSIF) according to Section 6-10-16, NMSA 1978. The collateral requirements should be calculated separately for each bank and disclosed in the notes as follows to show compliance and GASB 40 disclosure information:

(i) Total amount of deposit in bank or credit union \$300,000

(ii) Less: FDIC or NCUSIF coverage* 100,000

(iii) Uninsured public funds 200,000

(iv) Pledged collateral held by agency's agent in the

agency's name (50,000)

(v) Pledged collateral held by the pledging bank's trust department

in the agency's name (75,000)

(vi) Pledged collateral held by the pledging financial institution (12,500)

(vii) Pledged collateral held by the pledging bank's trust department or agent but not in the agency's name

(12,500)

(viii) Uninsured and uncollateralized (\$50,000)

Custodial credit risk is defined as the risk that the government's deposits may not be returned to it in the event of a bank failure. GASB 40 requires the custodial credit risk related to items (vi) and (vii) and (viii) above to be disclosed. To determine compliance with the 50% pledged collateral requirement of Section 6-10-17, NMSA 1978, the following disclosure should also be included for each financial institution.

50% pledged collateral requirement per statute \$100,000

Total pledged collateral (150,000)

Pledged collateral (over) under the requirement (\$50,000)

[*The FDIC issued an advisory opinion (FDIC 94-24) on June 13, 1994, stating that public funds are entitled to \$100,000 insurance for time or savings

deposits and \$100,000 for demand deposits deposited within the state in compliance with 12 CFR Subsection 330.14(b).]

(c) Repurchase agreements must be covered by 102% of pledged collateral per Section 6-10-10 H, NMSA 1978. Disclosure similar to that shown above is also required for the 102% of pledged collateral.

(d) The value of collateral consisting of obligations of the state of New Mexico, its agencies, institutions, counties, municipalities or other subdivisions shall be par value. All other securities shall be accepted as security at market value. (Section 6-10-16 C, NMSA 1978)

(e) State agency cash on deposit with the state treasurer does not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the agency notes to the financial statement should refer the reader to the state treasurer's separately issued financial statements which do disclose the collateral pledged to secure state treasurer cash and investments.

(f) If an agency has other "authorized" bank accounts, pledged collateral information should be obtained from the bank and disclosed in the agency financial statement notes. The state treasurer monitors pledged collateral related to most state agency bank accounts. In the event pledged collateral information specific to the agency is not available, the following note disclosure should be made. Detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, the state treasurer's office collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Applicable standards:

(a) GASB Statement No. 40, **Deposit and Investment Risk Disclosures**, is effective for financial statements for periods beginning after June 15, 2004 (FY05). This statement requires disclosure of the following when applicable.

(i) "Credit risk is disclosed by describing the credit quality ratings of investments in debt securities as described by rating agencies. Obligations of the U.S. government or obligations explicitly guaranteed by the U.S. government are exempt."

(ii) Custodial credit risk for deposits should be disclosed as described above in subsection (4)(b). "Investment securities are exposed to custodial credit risk when the securities are: uninsured and not registered in the name of the government, and are held by either the counterparty or the counterparty's trust department or agent, but not in the agency's name. Disclosure for investments exposed

to custodial credit risk should be by type of investment, the reported amount, and how the investments are held. Investments in external investment pools and in open-end mutual funds are not exposed to custodial credit risk." Custodial credit risk disclosure is required for securities lending collateral that is reported in the statement of net assets and for the underlying securities per guidance in GASB 40 paragraph 10.

(iii) Concentration of credit risk exists when an agency has investments in any one issuer that represent five percent or more of total investments of the agency or of a fund of the agency. Disclosure by amount and issuer is required when concentration of credit risk exists for an agency. Concentration of credit risk does not apply to investments issued by or explicitly guaranteed by the U.S. government or investments in mutual funds, external investment pools, and other pooled investments.

(iv) Disclosure of an agency's interest rate risk related to debt investments should be organized by investment type, using one of the following five methods: segmented time distribution; specific identification; weighted average maturity; duration; or the simulation model. Pooled investments that do not meet the definition of a 2a7-like pool should disclose interest rate risk information according to one of these methods.

(v) "If an agency's deposits or investments are exposed to foreign currency risk, the government should disclose the U.S. dollar balances of such deposits or investments, organized by currency denomination and, if applicable, investment type."

(b) SAS No. 101, *Auditing Fair Value Measurements and Disclosures*, was issued January 2003 and is effective for audits of financial statements for periods beginning on or after June 15, 2003 (FY04). The standard requires the auditor to:

(i) obtain audit evidence providing reasonable assurance that fair value amounts and disclosure are in accordance with GAAP;

(ii) understand the agency's process for determining fair value and its controls over that process in order to develop an effective audit approach;

(iii) evaluate whether fair value amounts and disclosures are in accordance with GAAP;

(iv) evaluate: management's intent and ability to carry out planned actions related to the use of fair value amounts and disclosures; the related requirements of presentation and disclosure; and how changes in fair values are reported in the financial statements;

(v) when there are no

market prices available, evaluate whether the agency's valuation method used to determine fair value is appropriate;

(vi) evaluate if the agency is applying fair value measurements consistently;

(vii) consider whether to engage a specialist; and

(viii) determine that the audit committee is informed about management's process used to arrive at sensitive accounting estimates, including fair value estimates, and about the basis for the auditor's conclusions about the reasonableness of those estimates.

(6) State treasurer external investment pool (local government investment pool): State treasurer external investment pool (local government investment pool): Agencies that have investments in the State Treasurer's Short-Term Investment Fund must include the required GASB Statement No. 31 paragraph 15 disclosure in the notes to their financial statements. The following information may be helpful for this disclosure:

(a) the investments are valued at fair value based on quoted market prices as of the valuation date;

(b) the state treasurer local government investment pool is not SEC registered. The state treasurer is authorized to invest the short-term investment funds, with the advice and consent of the state board of finance, in accordance with Sections 6-10-10 I through 6-10-10 P and Sections 6-10-10.1 A and E, NMSA 1978;

(c) the pool does not have unit shares. Per Section 6-10-10.1F, NMSA 1978, at the end of each month all interest earned is distributed by the state treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the fund amounts were invested; and

(d) participation in the local government investment pool is voluntary.

O. Budgetary presentation:

(1) Prior year balance included in budget:

(a) If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures budget and/or actual and budgetary comparison schedules shall include the amount of **fund balance** required to balance the budget.

(b) If the agency prepares its budget on the cash basis, the statement of revenues and expenditures budget and/or actual and budgetary comparison schedules shall include the amount of **prior-year cash balance** required to balance the budget.

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled.

This reconciliation is required at the individual fund level. If the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included on the statement itself or in the notes to the financial statements. If the budget comparison is presented as supplemental information as required by subsection (3)(c) below, the reconciliation to GAAP basis should be presented at the bottom of the budget comparison. If the required budgetary comparison is presented as RSI [for reasons described below in subsection (3)(b) below] the reconciliation should appear in either a separate schedule or in notes to RSI according to the *AICPA Audit and Accounting Guide, State and Local Governments*, (AAG-SLV 11.14).

(3) Budget comparison statements and schedules must show the original and final appropriated budget, the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) The basic financial statements must include budget comparison statements for **only** the general fund and major special revenue funds if the budget structure for those funds is similar enough to the GAAP fund structure to provide the necessary information.

(b) The required supplemental information section is the place where the budget comparison schedules should appear for the general fund and major special revenue funds if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for only those specific funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budget comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budget comparison data. See GASB Statement No. 41, *Budgetary Comparison Schedules - Perspective Differences*, paragraphs 3 and 10. When budget comparisons have to be presented as required supplemental information (RSI) due to such perspective differences it is a requirement of the state auditor that they be audited and included in the auditor's opinion. See AAG-SLV 14.53 and Appendix A Example 14A.14 in AAG-SLV 14.79 in the *AICPA Audit and Accounting Guide, State and Local Governments (2005)*.

(c) Supplemental information (SI) is the place where all other budget comparison information should appear except the general and major special revenue fund budget comparisons. Nonmajor govern-

mental funds and proprietary funds that have legally adopted budgets should have budget comparisons appearing in the SI section of the report. State agency audit reports should have applicable individual CAS fund budget comparisons presented as SI. It is a requirement of the state auditor that budget comparison statements presented in the basic financial statements or as required supplemental information (RSI) or supplemental information (SI) be audited and included in the auditor's opinion. For an example of an opinion that includes SI and/or RSI see Example 14A.14 in the *AICPA Audit and Accounting Guide, State and Local Governments (2005)*.

P. Appropriations to agencies: The budget comparison presented in the financial statements must be at least at the same appropriation level as the approved budget to demonstrate compliance with legal requirements. If actual expenditures exceed budgeted expenditures within a category that fact must be reported in a finding. If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables required to balance the budget) that fact must also be reported in a finding. Revenue categories of appropriations to state agencies are listed below. See Paragraph (6) of Subsection A of 2.2.2.12 NMAC for a list of the budget categories for state agency expenditures. The budget comparison statements for state agencies must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's appropriation:

- (1) state general fund;
- (2) other state funds;
- (3) internal service funds/inter-agency transfers; or
- (4) federal funds.

Q. Deferred compensation plans:

(1) GASB Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, was issued to reflect a change in the legal status of Internal Revenue Code (IRC) Section 457. The provisions of IRC Sections 457 deferred compensation plans were amended to state that a plan shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan are held in trust for the exclusive benefit of participants and their beneficiaries. Previously, the amounts deferred under an IRC Section 457 plan were legally the property of the sponsoring employer government. Under the new requirements, the government no longer owns the amounts deferred by employees or related income on those amounts.

- (2) The change in the law

required existing plans to establish a trust to hold IRC Section 457 plan assets by January 1, 1999. Sponsor governments had to adopt the provisions of GASB Statement No. 32 for periods beginning after December 31, 1998, or in the period the government complied with the law change, if earlier. A government is considered to hold plan assets in a fiduciary capacity only if it (1) has significant administrative responsibility for the plan or (2) performs the investment function for the plan.

(3) GASB 32 has been amended by GASB 34. See GASB 34 paragraphs 69 through 72 and Examples E-1 and E-2 for guidance on reporting fiduciary funds.

(4) GASB Statement No. 32 does not require specific note disclosures.

R. Consideration of the internal control and risk assessment in a financial statement audit:

(1) SAS No. 55, *Consideration of Internal Control in a Financial Statement Audit*, and SAS No. 78, *Consideration of Internal Control in a Financial Statement Audit, an Amendment to SAS No. 55*, SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit and Governmental Auditing Standards* footnote 43, provide IPAs with guidance related to consideration of internal control as part of an audit. SAS No. 78 replaced the SAS No. 55 definition and description of internal control with the definition and description from *Internal Control-Integrated Framework*, published by the committee on sponsoring organizations of the treadway commission (the COSO Report). SAS No. 78 describes internal control as consisting of five interrelated components: control environment; risk assessment; control activities; information and communication; and monitoring. SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit* amended SAS No. 55 further. "Information technology (IT) encompasses automated means of originating, processing, storing, and communicating information, and includes recording data devices, communication systems, computer systems (hardware and software components and data), and other electronic devices. An entity's use of IT may be extensive; however, the auditor is primarily interested in the entity's use of IT to initiate, record, process, and report transactions or other financial data. ...Controls in systems that use IT consist of a combination of automated controls (for example, controls embedded in computer programs) and manual controls." In obtaining an understanding of the internal controls of an entity that uses IT, "the auditor considers how an entity's use of IT and manual procedures may

affect controls relevant to the audit. The auditor then assesses control risk for the assertions embodied in the account balance, transaction class, and disclosure components of the financial statements." The FY04 implementation of SAS 99 also has an extensive impact on the auditor's consideration of internal controls and risk assessment. See Paragraph (1) of Subsection K of 2.2.2.10 NMAC for related details. The proposed SAS, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement (Assessing Risks)*, will require the auditor to obtain an understanding of the industry, regulatory, and other external factors, the nature of the entity, etc. GAGAS Section [3.42 (b)] already requires staff members to collectively possess "general knowledge of the environment in which the audited entity operates and the subject matter under review." The GAGAS standards go beyond the AICPA SAS requirements. Auditors must: consider the results of previous audits and attestation engagements; and detect material misstatements resulting from violations of contract provisions or grant agreements or from **abuse**. [GAGAS 4.05 (b) and (c)]

(2) All financial audits performed under this rule are **required to include tests of internal controls** (manual and/or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. Inquiry alone is not sufficient testing of internal controls. The requirement to test internal controls applies even in circumstances when the auditor has assessed control risk at maximum. **This is a special requirement of the state auditor.**

(3) The IPA is required to document:

- (a) the understanding of internal control (SAS 94 paragraph 61);
- (b) risk assessment (SAS 94 paragraph 83);
- (c) tests of controls (SAS No. 96);
- (d) and the following SAS 99 considerations:

- (i) brainstorming; procedures used to obtain information to identify and assess the risks of material misstatement due to fraud;
- (ii) specific risks of material misstatement due to fraud and the related auditor response to those risks;
- (iii) if improper revenue recognition is not identified, the reasons supporting the auditor's conclusion;
- (iv) results of procedures performed to further address the risk of management override of controls;
- (v) other conditions and analytical relationships that caused the auditor to believe that additional auditing procedures or other responses were required

and any further responses the auditor concluded were appropriate, to address such risks or other conditions; and

(vi) the nature of the communications about fraud made to management, the audit committee, and others.

(4) Reporting weaknesses in internal controls: Section 12-6-5, NMSA 1978, requires the annual financial and compliance audit of agencies to "set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination." Therefore, any instance of weakness in internal control defined by GAGAS 5.13 and GAGAS 5.16 instances that do not meet the reportable condition criteria, SAS AU 325.21 must be reported.

S. Lease purchase agreements:

(1) The New Mexico supreme court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement. (Any agreements executed prior to that date may not be extended or amended without compliance with the guidelines of **Montano v. Gabaldon**, 108 N.M. 94, 766 P.2d 1328).

(a) The attorney general interpreted **Montano** to mean that long-term contracts for professional services, leases, and real property rental agreements may still be entered into within the constraints of the Bateman Act and the Procurement Code. However, **any** agreement which is in effect for more than one fiscal year, including leases of real property, must have a provision allowing the agency to terminate the agreement at will at anytime, or at least at the end of each fiscal year, without penalty. Furthermore, the agency must have no "equitable or moral" duty to continue to make payments under the contract. The agreements must also contain a non-appropriation clause allowing for termination of the agreement in the event the agency decides not to appropriate funds for each fiscal year.

(b) The attorney general subsequently opined that if the source of funds to repay the debt is solely repaid from the project revenue or from a special non-general-tax fund and not from any general tax revenue, then the debt, be it in the form of bonds or a lease purchase agreement, is not the sort of debt which triggers the constitutional requirement of approval by the voters. This is the teaching of the **Connelly** case relied on by the court in **Montano**. **Montano** did not reverse **Connelly**, **Seward** and the other cases which have consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues.

(c) If specific questions as to the constitutionality of a particular lease agreement remain, an independent legal opinion should be obtained from the attorney general.

(2) Accounting for lease purchases that meet the FASB Statement No. 13 criteria for a capital lease purchase:

(a) modified accrual basis of accounting for fund financial statements:

(i) At the time of the lease purchase, the aggregate purchase liability should be reported as an expenditure and as "other financing source" in the governmental fund that acquired or constructed the general asset. (NCGAS 5 paragraph 14 and AAG-SLV 7.34)

(ii) Subsequent governmental fund lease payments should be recognized as expenditures in the accounting period in which the fund liability is incurred, if measurable. (NCGAS 1 paragraph 8 (a) and AAG-SLV 8.70)

(b) Full accrual basis of accounting for government-wide statements:

(i) At the time of the lease purchase, record the capitalized asset and related credit to net assets-invested in capital assets, net of related debt. The amount recorded is generally the lesser of the net present value of the minimum lease payments or the fair value of the leased property excluding executory costs and profit. (NCGAS 5 paragraph 16 and AAG-SLV 7.33)

(ii) The leased property is amortized in accordance with the government's normal depreciation policy for owned assets of the same type, but the amortization period is limited to the lease term, rather than the useful life of the asset. (AAG-SLV 7.33)

(iii) At the time of the lease purchase, record the liability for the current and long-term portions of the minimum lease payments due, with the related debit to net assets-invested in capital assets net of related debt. (AAG-SLV 7.32)

T. "Interfund activity: Under the GASB 34 reporting model (AAG-SLV 9.07) interfund activities and balances that must be reported are:

(1) interfund loans that are generally reported as interfund receivables/payables;

(2) interfund services provided and used that generally appear as revenues and expenditures/expenses;

(3) interfund transfers that appear as other financing sources/uses or after non-operating revenues/expenses; and

(4) interfund reimbursements that should appear as expenditures/expenses only in the funds that are responsible for them."

U. Required auditor's

reports:

(1) Auditor reports should follow the examples contained in the *AICPA Audit and Accounting Guide, Audits of State and Local Governments (2005)*. Appendix 14A-illustrative auditor's reports provide report illustrations. Example 14A.1 illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information. Guidance provided in Chapter 14, Appendix A Footnote 3 requires the following wording when opining on budget comparison statements, "and the respective changes in financial position and cash flows, where applicable, thereof and the respective budgetary comparison for the (indicate the funds involved) year then ended in conformity with accounting principles generally accepted in the United State of America." All independent auditors' reports should include a statement regarding the conduct of the audit being in accordance with auditing standards generally accepted in the United States of America **and with applicable Government Auditing Standards** per GAGAS 5.05. The first sentence of the SAS 29 opinion paragraph should state that the audit was conducted for the purpose of forming opinions on the basic financial statements and the combining and individual financial statements presented as supplemental information. The state auditor requires the reports required by GAGAS, OMB Circular A-133, and HUD Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) to be **included under one report cover** with the independent auditor's report, rather than presented under separate report covers. The reports referred to in these sections are the: Report on compliance and internal control over financial reporting based on an audit of financial statements performed in accordance with government auditing standards, (GAGAS 5.08 and 5.12); independent auditors' report including the SAS 29 opinion on the schedule of expenditures of federal awards and the HUD financial data schedule (FDS); the report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133, the Schedule of Findings and Questioned Costs (A-133 .505); and the audited HUD financial data schedule (FDS). The report must also contain a table of contents and official roster. An **exemption** from the "one report cover" rule must be obtained from the state auditor in order to present any of the above information under a separate cover.

(2) The proposed SAS, *Performing Audit Procedures in Response to Assessed Risk and Evaluating the Audit*

Evidence Obtained says: 69. "In evaluating whether the financial statements are presented fairly in all material respects in conformity with GAAP, the auditor should consider the effects both individually and in the aggregate, of misstatements that are corrected by the entity. ...The consideration and aggregation of misstatements should include likely misstatements (the auditor's best estimate of the total misstatements in the account balances or classes of transactions that he or she has examined), not just known misstatements (the amount of misstatements specifically identified). Likely misstatements should be aggregated in a way that enables the auditor to consider whether, in relation to individual amounts, subtotals, or totals in the financial statements, they materially misstate the financial statements taken as a whole." 81. "If the auditor concludes, based on accumulation of sufficient audit evidence, that effects of likely misstatements, individually or in the aggregate, cause the financial statements to be materially misstated, the auditor should request management to eliminate the misstatement. If the material misstatement is not eliminated, the auditor should issue a qualified or an adverse opinion on the financial statements. Material misstatements may be eliminated by, for example, application of appropriate accounting principles, other adjustments in amounts, or the addition of appropriate disclosure of inadequately disclosed matters. Even though the effects of likely misstatements on the financial statements may be immaterial, the auditor should recognize that an accumulation of immaterial misstatements in the balance sheet could contribute to material misstatements of future financial statements." Current standards (SAS AU 350.30) require the auditor to project misstatements resulting from audit sampling applications and all known misstatements from nonsampling applications and consider them in the aggregate along with other audit evidence when evaluating whether the financial statement taken as a whole may be materially misstated.

(3) Proper implementation of GASB 34 and/or GASB 35 will impact the auditor's opinion in the independent auditor's report.

(a) An adverse opinion shall result if anything less than a full set of financial statements, as required by GASB 34 and/or GASB 35, are presented.

(b) An adverse opinion shall result if the old model is presented instead of the new model under GASB 34 and/or GASB 35.

(c) A modified opinion may result if a component unit fails to implement GASB 34 and/or GASB 35 in the same fiscal period as the primary government.

(d) An adverse opinion will result

if infrastructure is excluded from the government-wide statements and it is significant.

(4) GAAP includes GASB 34 and/or 35 once the implementation date for the entity passes. "Rule 203 of the Code of Professional Conduct of the AICPA states: 'A member shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by council to establish such principles that has a material effect on the statements or data taken as a whole.'" (SAS AU Sec 508.14)

V. Service organizations:

(1) SAS No. 98 amends SAS No. 70, *Reports on the Processing of Transactions by Service Organizations*, to help IPAs determine what additional information they might need when auditing the financial statements of an agency that uses a service organization to process transactions. SAS No. 70 provides guidance an IPA should consider when auditing the financial statements of an agency that uses a service organization to process transactions. SAS No. 70 also provides guidance an IPA who issues reports on the processing of transactions by a service organization for use by other IPAs.

(2) SAS No. 70 (AU 324.03) defines a service organization as an organization that is engaged to provide either or both of the following services:

(a) execution of transactions and maintenance of the related accountability; and

(b) recording of transactions and processing of related data.

(c) The following are examples of service organizations:

(i) tax collection authorities;

(ii) EDP service centers that process transactions and related data for others;

(iii) regional educational service centers;

(iv) bank trust departments that invest and hold assets for employee benefit plans or others;

(v) payroll service companies that process payroll transactions and make payroll disbursements; and

(vi) potentially public housing authority fee accountants.

(3) When a governmental agency uses a service organization (as defined by

AU 324.03), its transactions are processed through another organization's financial reporting system and are subject to that organization's controls. If the use of the service organization is significant to planning and performing the audit, the IPA should obtain an understanding of the client's financial reporting system and internal controls for information produced by the service organization in accordance with SAS No. 70. **The understanding obtained should be documented.**

(4) SAS No. 98, *Omnibus Statement on Auditing Standards-2002*, amended SAS No. 70 to require a service auditor to inquire of management about subsequent events.

W. Disposition of property:

(1) Sections 13-6-1 and 13-6-2, NMSA 1978, and the Procurement Code, govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least thirty days prior to any such disposition of property on the agency inventory list described below in Subsection Z of 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action must be sent to the state auditor.

(2) In the event a computer is included in the planned disposition, the agency shall "sanitize" all licensed software and any electronic media pertaining to the agency. Hard drive erasure certification is still required even if the asset originally cost less than \$5,000 and was not included in the capital asset inventory. According to the May 5, 2002 memorandum from the chief information technology security and privacy office on this subject, "ordinary file deletion procedures do not erase the information stored on hard disks or other magnetic media. Sanitizing erases or overwrites totally and unequivocally, all information stored on the media. There are three basic approaches:

(a) purchasing and using a commercial degaussing product to erase magnetic disks;

(b) overwriting stored data a minimum of five times; or

(c) reformatting the drives (F diskings)."

(3) The agency will certify in writing the proper erasure of the hard drive and submit the certification along with the notification of the proposed disposition of property to the state auditor at least thirty days prior to taking action. The IPA shall test for compliance with this requirement. **This is a special requirement of the state auditor** and it applies even if the original purchase price of the computer was less

than \$5,000.

X. Joint powers agreements and memorandums of understanding:

(1) All joint powers agreements (JPA) and memorandums of understanding (MOU) must be listed in a supplementary schedule in the audit report. The schedule should include the following information for each JPA or MOU:

- (a) participants;
- (b) party responsible for operations;
- (c) description;
- (d) beginning and ending dates of the JPA or MOU;
- (e) total estimated amount of project and portion applicable to the agency;
- (f) amount the agency contributed in current fiscal year;
- (g) audit responsibility;
- (h) fiscal agent if applicable; and
- (i) name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements or memorandum of understanding, see Subsection Y of 2.2.2.10.NMAC (self-insurance).

Y. Self insurance: Those agencies that have self-insurance agreements should disclose the data in the notes to the financial statements. The note should include the name of the agency that is providing the insurance and the amount of contribution by the agency to the fund during the year. There should be full disclosure in the notes to the financial statements per the requirements of GASB 10.

Z. Capital asset inventory:

(1) The legislature enacted HB 1074 during a recent legislative session, changing the "Audit Act" capitalization threshold for movable chattel and equipment from items costing more than \$1,000 to items costing more than \$5,000. Due to this change in policy, the Audit Act (12-6-10 NMSA 1978) now requires agencies to capitalize only chattels and equipment whose cost is over \$5,000. The state auditor still encourages agencies to maintain a separate accountability report of those items that cost \$5,000 or less, for asset safeguarding and management purposes. This change in the agency's capitalization threshold for capital assets should be discussed in a note and reflected in the financial statements. If the resulting change in the agency capital assets has a material effect on the financial statements there should be an explanatory paragraph following the opinion paragraph in the independent auditors' report regarding this issue as required by SAS AU 508.16.

(2) Section 12-6-10, NMSA 1978 requires each agency to conduct an annual

physical inventory of movable chattels and equipment on the inventory list at the end of each fiscal year. The agency shall certify the correctness of the inventory after the physical inventory.

AA. SAS 89 audit adjustments: The engagement letter should state that management is responsible for adjusting the financial statements to correct material misstatements. In the representation letter, management should affirm to the auditor that the effects of any uncorrected financial statement misstatements aggregated by the auditor are immaterial, both individually and in total. In such cases, a summary of any misstatements that management did not correct in their financial statements must be included in or attached to the management representation letter. The auditor is required to inform those who have oversight of the financial reporting process about uncorrected misstatements aggregated by the auditor during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements taken as a whole. Passed audit adjustments are those determined by the auditor that did not get included in the audited financial statements. **The auditor must present this list of clearly labeled "passed adjustments" to the agency management and governing board representatives at the exit conference.** A copy of the management representation letter and the list of "passed adjustments," and the completed and signed preliminary review guide must be submitted to the state auditor with the audit report for review. In the event no audit adjustments were omitted from the financial statements a memo stating that there were "no passed adjustments" should take the place of the list of "passed adjustments."

BB. GASB 34 implementation issues:

(1) Agency funds are excluded from the statement of changes in fiduciary net assets (GASB 34 paragraph 110) because they have no "net assets." Therefore it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as supplemental information (SI) for all agencies that have agency funds. This schedule should appear toward the end of the table of contents and requires a SAS 29 opinion. See also Subparagraph (e) of Paragraph (3) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of school district agency fund statements of changes in assets and liabilities for agency funds.

(2) Per GASB 34 paragraph 148, Phase 1 governments that were required to

implement GASB 34 in FY02 must retroactively report all major general infrastructure assets for fiscal years beginning after June 15, 2005 (FY06).

CC. Accounting for forfeited property:

(1) Seized property should be accounted for in an agency fund before the Section 31-27-6, NMSA 1978 "judgment of forfeiture."

(2) Once the judgment of forfeiture is made, the property should be accounted for in a special revenue fund because the revenues are legally restricted for specified purposes. The balance sheet of such a special revenue fund that accounts for seized property may have zero balances at the end of a fiscal year because net balance amounts may have been transferred to the general fund of the governing body of the seizing law enforcement agency, or the general fund to be used for drug abuse treatment services, for drug prevention and education programs, for other substance abuse demand-reduction initiatives or for enforcing narcotics law violations. Exceptions are forfeitures of property arising from: violations of hunting or fishing regulations that must be deposited in the game protection fund; and violations against cultural properties that must be used for the restoration of the affected cultural property, with net balances being deposited into the general fund.

(3) Seized property resulting in forfeiture proceeds creates revenue for the governmental agency that seized the property. That revenue and related expenditures must be included in the budget process of the governmental agency.

(4) See Section 31-27-1, NMSA 1978 and related cross references for guidance on various types of seizures and forfeitures. Section 31-27-7, NMSA 1978 provides statutory guidance for proper disposition of forfeited property and use (allowable expenditures) of all related proceeds.

DD. Definition of "restricted" net assets: GASB 34 paragraphs 33 through 37 explain the components of net assets. Net assets are restricted when constraints placed on net asset use are either: externally imposed by creditors (such as through debt covenants), grantors, contributors, or by laws or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation. Enabling legislation authorizes the government to assess, levy, charge, or otherwise mandate payment of resources (from external resource providers) and includes a **legally enforceable requirement** that those resources be used only for the specific purposes stipulated in the legislation. GASB Statement 46 is effective for periods beginning after June 15, 2005, (FY06), with earlier application encouraged. This statement

says “legally enforceable” means that “a government can be compelled by an external party-such as citizens, public interest groups, or the judiciary-to use resources created by enabling legislation only for the purposes specified by the legislation. Generally, the enforceability of an enabling legislation restriction is determined by professional judgment.” Paragraph 5 states, “If resources are used for a purpose other than those stipulated in the enabling legislation or if there is other cause for reconsideration, governments should reevaluate the legal enforceability of the restrictions to determine if the resources should continue to be reported as restricted. If reevaluation results in a determination that a particular restriction is no longer legally enforceable, then from the beginning of that period forward the resources should be reported as unrestricted. If it is determined that the restrictions continue to be legally enforceable, then for the purposes of financial reporting, the restricted net assets should not reflect any reduction for resources used for purposes not stipulated by the enabling legislation.

EE. Impairment of capital assets and insurance recoveries: GASB Statement 42, Accounting and Financial Reporting for Impairment of Capital Assets and for Insurance Recoveries, is effective for financial statements for periods beginning after December 15, 2004 (FY06) with earlier application encouraged. All insurance recoveries (GASB 42 paragraph 4) should be recorded as follows: in the fund financial statements the insurance recovery is reported as an “other financing source” or extraordinary item, as appropriate and the restoration or replacement of the impaired capital asset should be reported as a separate transaction; in the government-wide financial statements and the proprietary fund financial statements the insurance recovery and impairment loss should be recorded as a separate transaction from the restoration or replacement of the impaired capital asset. The impairment loss should be reported net of the associated insurance recovery when they occur in the same year. When they occur in different fiscal years, the insurance recovery should be reported as a program revenue, nonoperating revenue, or extraordinary item, as appropriate. See GASB 42 for the definition of impairment, assessment of impairment, identification of events or changes in circumstances that may indicate impairment, the impairment test and the measurement of impairment. Unless the impairment is considered temporary the loss from impairment should be reported in the statement of activities and statement of revenues, expenses, and changes in fund net assets. Disclosure is required of: the carrying amount of impaired capital assets that are idle at year-

end; and the amount and classification of insurance recoveries if not otherwise apparent.

FF. The statistical section: GASB Statement 44, Economic Condition Reporting: The statistical section, is effective for statistical sections required to be part of a comprehensive annual financial report (CAFR) for periods beginning after June 15, 2005 (FY06). Governments are not required to prepare a statistical section if they do not present their basic financial statements within a CAFR. **This statement does apply to any statistical section that accompanies a government’s basic financial statements.** The statement establishes the objectives of the statistical section and the five categories of information it contains: financial trends information; revenue capacity information; debt capacity; demographic and economic information; and operating information. Governments should include trend information on governmental fund balances and principal employers, ten-year trend information about net assets and changes in net assets, debt information from the government wide financial statements and notes, and notes to the schedules regarding sources, methodologies, and assumptions, and explanations of objectives, unfamiliar concepts, relationships between information the schedules and elsewhere in the audit report, and atypical trends and irregular data that users would not otherwise understand. Governments are no longer required to present information such as special assessment levies and collections, construction activity, bank deposits or a separate schedule of debt service ratios.

GG. Termination benefits: GASB Statement 47, Accounting for Termination Benefits, is effective for periods beginning after June 15, 2005 (FY06), except for termination benefits provided through an existing defined benefit OPEB plan, in which case the statement should be implemented simultaneously with the requirements of Statement 45. Termination benefits are benefits provided by employers to employees as an inducement to hasten the termination of services or as a result of a voluntary early termination or as a consequence of the involuntary early termination of services. Termination benefits include early-retirement incentives, severance benefits, and other termination-related benefits. The statement determines (1) when a liability and expense should be recognized (a) on the accrual basis for voluntary and involuntary termination benefits and (b) on the modified accrual basis; and (2) how health care-related termination benefits should be measured.

HH. Applicable address changes: For note disclosure purposes, the Retiree Health Care Authority’s address has

changed again to 4308 Carlisle Blvd, NE, Suite 104, Albuquerque, NM 87109.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3-31-06]

2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. The purpose of the Accountability in Government Act (AGA) (Section 6-3A-1 to 6-3A-8, NMSA 1978) is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

B. Agency performance measures are included in the General Appropriations Act. The agency shall include a schedule of performance data (outcomes, outputs, efficiency, etc.) if the schedule is required by the agency’s oversight agency such as DFA, HED and PED and preparation guidelines are issued by the oversight agency.

C. The auditor’s responsibilities for performing procedures and reporting on required supplemental information (RSI) is provided in SAS No. 52, *Omnibus Statement on Auditing Standards* 1987 (AICPA, Professional Standards, vol. 1, AU 558, *Required Supplemental Information*). The auditor ordinarily should apply the following limited procedures to RSI.

(1) Inquire of management about the methods of preparing the information, including:

(a) whether it is measured and presented within prescribed guidelines;

(b) whether methods of measurement or presentation have been changed from those used in the prior period and the reasons for any such changes; and

(c) any significant assumptions or interpretations underlying the measurement or presentation.

(2) Compare the information for consistency with:

(a) management’s responses to the foregoing inquiries;

(b) audited financial statements; and

(c) other knowledge obtained during the audit.

(3) Consider whether to include representations on RSI in the management representation letter.

D. Apply additional procedures, if any, that other AICPA SAs, SAS interpretations, audit and accounting guides, or statements of position prescribe for specific types of RSI.

E. Make additional inquiries if applying the foregoing procedures causes the auditor to believe that the information may not be measured or pre-

sented within applicable guidelines.

F. The IPA should report on the performance data in either an agency-prepared or auditor submitted document when:

- (1) the required performance data is omitted;
- (2) the auditor concludes that the measurement or presentation of the performance data departs materially from prescribed guidelines;
- (3) the auditor is unable to complete the prescribed procedures; and
- (4) the auditor is unable to remove substantial doubts about whether the performance data conforms to prescribed guidelines.

G. The IPA generally has no reporting requirement; however, the IPA may disclaim an opinion on the information.

[2.2.2.11 NMAC - Rp, 2.2.2.11 NMAC, 3-31-06]

2.2.2.12 SPECIFIC CRITERIA: The applicable specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, the appropriate state statutes should be reviewed in planning governmental audits.

A. PERTAINING TO AUDITS OF STATE AGENCIES:

(1) Due dates for agency audits: House Bill 219 amended Section 12-6-3, NMSA 1978 so that by statute, state agency reports are due no later than 60 days after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division mandates that each agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. This requirement does not prevent the auditor from performing interim audit work prior to receipt of the DFA notice of agency preparedness. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediate-

ly write a dated letter to the state auditor describing the problems. The financial control division of the department of finance administration must be sent a photocopy of the letter.

(2) **Materiality at the individual fund level** means at the individual central accounting system (CAS) fund level for state agencies. The individual CAS funds should be shown in the combining financial statements and opined on in the independent auditors' report.

(3) Encumbrances reconciliation and accounts payable at year-end: DFA maintains an encumbrance system and general ledger for those state agencies that process payment vouchers through its central accounting system. Given the volume of transactions, DFA will not allow agencies to record accounts payable on its central accounting system, except in special circumstances. Nevertheless, through a deadline specified in the year-end closing instructions DFA allow agencies to charge an expenditure that is an accounts payable at June 30, 2006 to the fiscal year in which the related encumbrance was established. After the deadline, the agency may still make the expenditure; however, the agency must first obtain DFA's permission to pay prior year bills. "Permission to pay prior year bills" is a penalty under law for not paying bills timely. It penalizes a state agency by mandating that the agency charge an expenditure of one fiscal year to the subsequent fiscal year's budget. If an agency meets the deadline set by DFA and obtains any needed exemptions to record accounts payable, its expenditures and encumbrances balances reflected in the year-end central accounting system reports will be stated on a basis consistent with the modified accrual basis of accounting. If an agency fails to do so, the agency has not complied with DFA rules, specifically 2.20.5 and 2.20.6 NMAC, and balances will require adjustment prior to their presentation in the financial statements. Auditors must thoroughly familiarize themselves with how the state's year-end closing processes works. In most cases, auditors should be physically present on June 30, 2006 at the agency they are auditing to observe the proper receiving and accounting for goods and services.

(4) Special, deficiency, and specific appropriations:

(a) Special, deficiency, and specific appropriations must be disclosed in the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances and unencumbered balances should be shown in a supplementary schedule or in a note to the financial statements. **This is a special requirement of the state auditor.**

(b) Any special, deficiency, and

specific appropriation balances that are not reverted at the balance sheet date must be presented as unearned or deferred revenue or as: reserved fund balance in the fund financial statements; and restricted net assets in the statement of net assets. The accounting treatment of any balances should be fully explained in the supplementary schedule or in a note to the financial statements regarding the special appropriations.

(5) Net assets/fund balance:

(a) The government-wide statement of net assets and the proprietary fund balance sheet should show net assets as: (1) invested in capital assets, net of related debt; (2) restricted; and/or (3) unrestricted. GASB 34 paragraphs 33 through 37 explain the components of net assets. Net assets are restricted when constraints placed on net asset use are either: externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation. Note that restricted net assets are not the equivalent of reserved fund balances. Encumbrances should not be shown as restricted net assets. See Section 2.2.2.10.DD for more information regarding restricted net assets and GASB Statement 46.

(b) Governmental fund financial statement fund balances should be segregated into reserved fund balances and unreserved and legally designated fund balances (GASB 34 paragraph 84). In general, an agency should show reserved fund balance related to encumbrances (related to an appropriation period that extends beyond the fiscal year), inventories, and petty cash. All other reservations must be specifically required or authorized by legislation. The notes to the financial statements must disclose the specific legal authority for all reservations of fund balance. Reserved fund balances of the combined nonmajor funds should be displayed in sufficient detail to disclose the purposes of the reservations (i.e., reserved for debt service or reserved for encumbrances). Unreserved fund balances of nonmajor funds should be displayed by fund type on the face of the balance sheet.

(c) The statement of fiduciary net assets (fiduciary fund financial statement) should show net assets as "held in trust for ..." (GASB 34 paragraph 108 and Example E-1)

(6) Books of record:

(a) DFA maintains a central accounting system (CAS) of state accounts for cash and budgetary control purposes. DFA provides: a three-volume set of DFA model accounting practices (MAPs) available that describes state agency accounting

policies, procedures, document processing and GASB 34 implementation and various white papers. They provide excellent guidance for an auditor regarding policy and procedure requirements and are available on DFA's website at www.dfafcd.state.nm.us.

(b) The CAS chart of accounts reflects the following appropriation levels. The audit report statements of revenues and expenditures should continue to be presented in accordance with GAAP, by function or program classification. However, the budget comparison statements must be presented using the level of appropriation reflected in the agency appropriation for the current year.

Apr Code	Appropriation Unit Description
200	Personal SVC & Employee Benefits
300	Contractual Services
400	Other
500	Other Financing Uses
600	Non-budgeted

The CAS revenue codes follow a format that facilitates GASB 34 revenue classification:

Revenue Code	Type of Revenue
XXX3	Program Charges for S ervices
XXX4	Program Operating R evenue
XXX5	Program Capital Contrib /Grants
XXX6	General Revenue
XXX7	Addition to Employee Retirement P lan
XXX8	Other Financing S ources
XXX9	Special Items/E xtraordinary
XXX0	Transfers

For more detail about the chart of accounts see the DFA website.

(7) Reversions to state general fund:

(a) All reversions to the state general fund must be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund FY 06). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Section 6-5-10, NMSA 1978 requires "all unreserved, undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30, to the general fund. The division may adjust the reversion **within forty five days** of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(8) Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes (a) transfers (redefined to include activities previously known as "operating transfers" and "residual equity transfers" and (b) reimbursements (GASB 34 paragraph 410):

(a) Intra-agency transfers between funds within the agency should offset. Reasons for intra-agency transfers should be fully explained in the notes to the financial statements. In the separate audit report of the state agency these transfers between their internal funds should be shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements.

(b) Inter-agency transfers (between an agency's internal funds and other funds of the state) should be segregated from intra-agency transfers and should be fully explained in the notes to the financial statements along with the agency number and cash account (CAS fund number) to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and cash account numbers must be shown. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Inter-agency transfers between legally separate component units and the primary government, the state:

(i) The *AICPA Audit and Accounting Guide, Audits of State and Local Governments (2005)*, lists some examples of potential component units (blended and/or discrete) of a state in Section 12.02: school districts; colleges and universities; utilities; hospitals and other health care organizations; and public employee retirement systems.

(ii) If the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements should report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government's financial statements, such inter-agency transfers would be reclassified as transfers.

(GASB 34 paragraph 318)

(iii) All resource flows between a discretely presented component unit of the state and other funds of the state are required to be reported as external transactions-revenues and expenses in the primary government's financial statements and the component unit's separately issued financial statements. (GASB 34 paragraph 318)

(d) All transfers to and from CAS fund 853, the state general fund appropriation account, must be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections.

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements should not be reported as interfund activity in the financial statements.

(9) General services department (GSD) capital projects: GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency must capitalize those assets based on actual amounts expended, in accordance with GSD instructions issued in 2.20.1.10 NMAC, *Valuation of Assets*.

(10) State-owned motor vehicle inventory: Successful management of the state-owned vehicles pursuant to the Transportation Services Act (15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(11) Independent auditor's report:

(a) The independent auditor's report for state agencies, district attorneys, and district courts must include an explanatory paragraph preceding the opinion paragraph. The explanatory paragraph should reference the summary of significant accounting principles disclosure regarding the reporting agency, and indicate that the financial statements are intended to "present the financial position and changes in financial position and, where applicable, cash flows of only that portion of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the state that is attributable to the transactions of the department. They do not purport to, and do not, present fairly the financial position of the state as of June 30, 20X1', the changes

in its financial position, or where applicable, its cash flows for the year then ended." See Example A.16 in Appendix A of AAG-SLV 14.79 in the *AICPA, Audit and Accounting Guide State and Local Governments [2005]*.

(b) A statement should be included that the audit was made in accordance with generally accepted government auditing standards per GAGAS 5.05.

(12) Modified accrual budget basis: The General Appropriation Act of 2004, which applies to fiscal year 2005 budgets established the **modified accrual basis** of accounting as the budgetary basis of accounting for the state of New Mexico. State agencies will have a **different budget basis** beginning in the fiscal year ended June 30, 2005. DFA has a white paper on this subject available at www.dfafcd.state.nm.us, named basis of accounting-modified accrual and the budgetary basis. Under the new law, encumbrances related to single year appropriations lapse at year end. The portion of an encumbrance representing goods and services received by the last day of the fiscal year should be reclassified as accounts payable. Any remaining encumbrances related to single year appropriations must be reclassified as unreserved fund balance and a liability recorded to recognize any amounts subject to reversion. If the legislature provides a new appropriation for a specific encumbrance, it is carried forward to a new appropriation period to be charged against the new budget. If the legislature does not provide a new appropriation for an encumbrance, the encumbrance is no longer authorized. Appropriation periods are sometimes for periods in excess of twelve months (multiple-year appropriations). When such appropriation periods lapse, the authority for the budget also lapses and encumbrances can no longer be charged to that budget. The accounts receivable period of availability will be 60 days following the end of the fiscal year. Agencies should be recording receivables regularly, not just at year end.

(13) Bond proceeds presentation:

(a) The state treasurer's office (STO) administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO should not report in its basic financial statements bonds payable that are obligations of the state of New Mexico. The proper reporting of these payables and the related bond face amounts (proceeds) is in the state's comprehensive annual financial report (CAFR). The STO audit report, notes to the financial statements must: (1) explain the following by statute STO is responsible for making the state's bond payments and keeping the related records, however, it is not responsi-

ble for the related debt, the state is; and (2) refer the reader to the detailed supplemental information in the STO audit report and the statewide CAFR. The STO's financial statements include audited supplemental information (SI) regarding the state of New Mexico bond obligations. The SI schedules must show: (1) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASB 34 paragraph 119; (2) the details of debt service requirements to maturity required by GASB 38 paragraph 10; and (3) any violations of bond covenants and related actions taken to address violations of bond covenants, required by GASB 38 paragraph 9 and Section 12-6-5, NMSA 1978.

(b) State agencies that receive appropriated bond proceeds to administer for project recipients should report those appropriations and related activity as follows so that the primary users of the separate agency audit reports, the legislators, can easily identify specific appropriations. Appropriate reclassifications for GAAP presentation in the statewide CAFR will occur during the CAFR compilation:

(i) A special revenue fund should be used to account for the proceeds and related expenditures.

(ii) In the statement of activities, the proceeds should be reported as general revenue under the caption "bond proceeds appropriations."

(iii) In the statement of revenues, expenditures, and changes in fund balances, the bond proceeds should be reported as revenue using the same caption, "bond proceeds appropriation."

(iv) **The entire amount of the proceeds appropriated should be recognized as revenue, and expenses once the bonds are sold** and as "due from other state agency" and "due to project recipient." Unexpended balances-that under law or the terms of the bond statement are due to another fund-should be reported as a liability to the appropriate fund. (The bond statement identifies the fund owed).

(v) In the notes to the financial statements, agencies should include an explanation that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients and that the agency is not obligated in any manner for the related indebtedness. Agencies should also disclose any restrictions on the use of the proceeds, such as reversions of unexpended balances. (Any restrictions are listed in the bond statement, appropriation act, or both).

(c) The DFA state board of finance deposits bond proceeds into an agency fund for arbitrage administration

purposes. As the proceeds are needed, agencies draw them down. This activity should be reported by DFA as follows:

(i) The entire amount of bond proceeds held in the agency fund for the special revenue funds of DFA should be accounted for in the agency fund as a liability under the caption "due to other funds" and as an asset in the special revenue funds under the caption "due from other funds." For reporting purposes, these amounts must be reclassified from DFA's agency funds to assets of the DFA fund they belong to in accordance with GASB 34 paragraph 111.

(ii) The entire amount of bond proceeds held in the agency fund for the special revenue funds of state agencies, other than DFA, should be accounted for and reported as a liability in the agency fund under the caption "due to other state agencies" and in the special revenue funds of the recipient administering state agencies as an asset under the caption "due from other state agencies." (Agencies should encourage their independent auditors to confirm with the board of finance the balances due to the agency special revenue funds).

B. PERTAINING TO HOUSING AUTHORITIES:

(1) **The state of New Mexico currently has 52 housing authorities that are included under the Audit Act:**

- (a) regional housing authorities 7
- (b) component unit of public housing authorities 2
- (c) component units or department of municipalities 33
- (d) component units or department of counties 9
- (e) component unit of the state 1

(2) The housing authority must be included in the financial report of the primary government by discrete presentation unless an exemption from this requirement is obtained from the state auditor.

(a) Discrete presentation shows financial data of the component unit in a column, to the right of and separate from the financial data of the primary government. See GASB 14 paragraphs 44 through 50 for additional guidance.

(b) The primary government and/or auditor must make the determination whether the housing authority is a component unit of the primary government. See Paragraph (1) of Subsection A of 2.2.2.10 NMAC for guidance in this determination. In the event the primary government and/or auditor determine that the housing authority is a department of, rather than a component unit of the primary government, a **request for exemption from the discrete presentation requirement must be submitted to**

the state auditor, by the agency, explaining why the housing authority should not be a discretely presented component unit.

The request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request must address these issues:

(i) the housing authority is not a corporation registered with the public regulation commission;

(ii) there was never a resolution or ordinance making the housing authority a public body corporate; and

(iii) the housing authority was authorized under Section 3-45-1, NMSA 1978, Municipal Housing Law.

(c) Upon receipt of the exemption granted by the state auditor from the requirement for discrete presentation, the housing authority department or program would be included in the financial report of the primary government like any other department or program of the primary government.

(d) **An annual exemption is required.**

(3) For housing authorities that are component units, the financial data for all funds of the housing authority **must be accounted for in proprietary funds.**

(4) Notice PIH 2002-4 (HA) dated February 11, 2002, requires all public housing authorities to submit one copy of the completed audit report including the findings to the HUD office for review, effective for fiscal years ended June 30, 2001.

(a) The IPA shall issue to the housing authority **a separate audit report if it is required by HUD or the agency.** The preparation and submission cost for any required separate audit report must be included in the audit contract.

(b) Any separate housing authority audit report is due on or before the due date specified in 2.2.2.9 NMAC. If the separate report is not received on or before the due date by the state auditor, the report is late and not in compliance with the requirements of Subsection A of 2.2.2.9 NMAC, and a current-year audit finding must be included in the audit report.

(5) Auditors and public housing authorities must follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities Not-for-Profit Multifamily Program Participants and their Independent Accountants*, which is available on the real estate assessment center (REAC) web site at www.hud.gov under a search for UFRS. Additional administrative issues related to the audit of public

housing authorities follow.

(a) The local governments are encouraged to include representatives from the housing authority in the IPA selection process.

(b) Audits of the public housing authorities shall be conducted by the same IPA who performs the audit of the local government. Separate audit contracts will not be approved without an exemption approved by the state auditor.

(c) Audits of public housing authorities that are component units of or are otherwise included in a state or local government that expends \$500,000 (require a single audit) must also include a separate agreed-upon procedures engagement related to the audited financial data schedule (FDS) which is electronically submitted to REAC by the housing authority. The PHA must submit electronically a final approved FDS based on the audited financial statements **no later than 9 months** after the PHA's fiscal year end. The auditor must:

(i) electronically report on his comparison of the electronic FDS submission in the REAC staging data base through the use of an ID and password;

(ii) include a hard copy of the FDS in the audit report;

(iii) render a SAS 29 opinion on the FDS; and

(iv) explain any material differences between the audited FDS and the financial statements in the notes to the financial statements. **The audit must include this separate attestation engagement. The preparation and submission cost for this HUD requirement must be included in the audit contract.**

(d) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold a separate entrance and exit conference with housing authority's management and a member of the governing board.

(e) The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(f) The IPA shall consider whether any fee accountant used by the housing authority is a service organization according to the criteria of SAS 70. See Subsection V of 2.2.2.10 NMAC, SAS AU 324, and the SAS 98 amendment to SAS 70 for further explanation regarding service organizations and related auditing requirements. If the housing authority has not implemented effective internal controls over the fee accountant's work product, the auditor will have to obtain sufficient understanding of the internal controls the fee

accountant has over his/her work product to plan the audit. A service auditor is the auditor who reports on the processing of transactions by a service organization. A service auditor's report on controls placed in operation at the fee accountant's organization should be helpful in providing a sufficient understanding to plan the audit of the housing authority; however, relying on that report alone, the housing authority auditor cannot reduce the assessed level of control risk below the maximum. To do that the housing authority auditor would have to do one or more of the following:

(i) test the housing authority's controls over the activities of the fee accountant;

(ii) obtain a copy of the fee accountant's auditors' report on controls placed in operation and tests of operating effectiveness, or a report on the application of agreed-upon procedures that describes relevant tests of controls; or

(iii) perform tests of the fee accountant's internal controls at the fee accountant's office. (SAS AU 324.12)

C. PERTAINING TO SCHOOL DISTRICTS:

(1) Update to the auditor selection process: After completing the evaluation for each IPA the school district shall submit the IPA recommendation to the state public education department (PED) for approval, prior to submitting the recommendation to the state auditor for approval. The sample cover letter provided in Appendix A may be used for the PED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Audit planning level of materiality:

(a) As explained in Sections 2.2.2.10.A.(1) and (2) the level of planning materiality and required auditor opinion will be at the individual fund level for the primary government and at the individual fund level for the component units.

(b) If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1 NMSA 1978, requires that entity to be audited regardless of materiality.

(3) Regional education cooperative (REC) audits:

(a) For accounting purposes, RECs are considered joint ventures, in accordance with the GASB *Codification of Governmental Accounting and Financial Reporting Standards*, Section J50 "Accounting for Participation in Joint Ventures and Jointly Governed Organizations".

(b) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide a copy of this report to the participating school districts and the PED once the report has been

released by the state auditor. The presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America.

(c) Audits of RECs should test for compliance with PED Regulations 6.23.3.7 through 6.23.3.12.

(d) On-behalf payments for fringe benefits and salaries made by RECs for employees of school districts should be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with Sec. N50.131.

(4) School district audits must address the following issues:

(a) Audits of school districts shall test for compliance with PED Regulation 6.20.2 NMAC, *Governing Budgeting and Accounting for New Mexico Public Schools and School Districts* and the *Manual of Procedures*, primarily Supplement 7, *Cash Controls*.

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule will account for cash in the same categories as used by the district in its monthly cash reports to the state public education department.

(c) On-behalf payments of salaries and fringe benefits made for school district employees by RECs must be accounted for in accordance with GASB Cod. Sec. N50.129 through .133 and disclosed in accordance with Sec. N50.134. "Employer governments should obtain information about the amount of on-behalf payments for fringe benefits and salaries from the paying entity or the third-party recipient; interentity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts." (GASB 24 paragraph 9)

(d) Any joint ventures or other entities created by the school districts are agencies subject to the Audit Act.

(e) Agency fund reporting: Under GASB 34 a statement of changes in fiduciary net assets is required for pension trust funds, investment trust funds, and private-purpose trust funds. Agency funds have no net assets and will be excluded from this presentation. (GASB 34 paragraph 110) Therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the fiscal year be included as supplemental information in the audit report, showing the changes in agency funds summarized by school.

(f) Capital expenditures by the NM public school facilities authority:

School districts must: review capital expenditures made for repairs and building construction projects of the school district by the NM public school facilities authority; determine the amount of capital expenditures that should be added to the capital assets of the school district; and account for those additions properly. The auditor should test the school district capital asset additions for proper inclusion of these expenditures.

(5) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school. A charter school is considered a public school, accredited by the state board of public education and accountable to the school district's local school board for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) In defining a school district's financial reporting agency, certain GASB 14 criteria must be applied to determine whether the district (primary government) has any component units that must be included. A charter school is a component unit of its sponsoring school district. The charter schools must be included in the financial statements of their sponsoring school districts by discrete presentation. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government.

(c) Financial statement presentation requirements for charter school component units follow. Note that the scope of the audit includes supplemental information consisting of component unit fund financial statements and combining statements which must be opined on. The charter schools should be reported in the following manner:

(i) all charter schools should be reported as significant and therefore major component units of the school district. All the charter schools should be included in the basic financial statements (full accrual basis presentation) in one of the following manners: a separate column for each component unit presented in the government-wide statement; combining statements of component units presented as a basic financial statement after the fund financial statements; or as condensed financial statements in the notes to the basic financial statements. (GASB 34 paragraphs 124 to 126)

(ii) fund financial statements are required because such information is not available in separately issued financial reports on the charter schools. This modified accrual basis presentation

should be presented as supplemental information (SI) according to AAG-SLV 3.20 (2003). If any funds presented are the result of combining nonmajor funds, a combining statement should also be included in the SI presentation.

(d) The state auditor requires that individual budget-to-actual comparison schedules for the charter schools be included in the financial report following the fund financial statements and related combining statements as SI to demonstrate compliance with legally adopted budgets. The individual budget comparison schedules are also included in the scope of the audit and must be audited and included in the auditor's opinion.

(e) House Bill 510, which becomes effective July 1, 2005, was passed during the 2005 Legislative Session. Section 22-8B-4.2, Charter School Facilities Standards, requires charter schools to meet outlined facilities requirements by specified deadlines.

(6) New Mexico public schools insurance authority (NMPSIA): Both legal compliance and substantive tests should be performed at the agency level on these transactions.

D. PERTAINING TO LOCAL PUBLIC BODIES:

(1) Obsolete county records: Section 14-1-8, NMSA 1978 requires that "An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage." The auditor should test for compliance with this statute.

(2) Tax roll reconciliation - county governments: Counties' audit reports must include two supplementary schedules. The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30th receivable balance with an additional breakout of the receivable for the past 10 years. The second schedule titled "county treasurer's property tax schedule" must show by agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year, by

agency. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASB 33. Property taxes levied on January 2005 are budgeted for the fiscal year July 1, 2005 through June 30, 2006. If the county does not have a system set up to gather and report the necessary information, or the necessary information itself, for the property tax schedule a related finding is required.

(3) The following is an example of a tax roll reconciliation schedule:

STATE OF NEW MEXICO (NAME) COUNTY TAX ROLL RECONCILIATION - CHANGES IN THE COUNTY TREASURER'S PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 200 6	
Property taxes receivable , beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charged to treasurer for fiscal year	4,466,602
Adjustments:	
Increases in taxes receivables	3,066
Charge off of taxes receivables	(6,144)
Total receivables prior to collections	5,104,814
Collections for fiscal year end ed June 30, 200 6	(4,330,993)
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
1996	\$ 0
1997	29
1998	556
1999	1,848
2000	3,381
2001	5,498
2002	13,169
2003	34,134
2004	167,729
2005	547,477
Total taxes receivable	<u>\$ 773,821</u>

(4) An example of the schedule titled “county treasurer’s property tax schedule” is shown in Appendix E.

E. PERTAINING TO AUDITS OF COLLEGES AND UNIVERSITIES:

(1) Update to the auditor selection process: After completing the evaluation for each IPA the college or university shall submit the IPA recommendation to the higher education department (HED) for approval, prior to submitting the recommendation to the state auditor for approval. The sample cover letter provided in Appendix A may be used for the HED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Budget comparison schedules: The state auditor requires that every college and university audit report include budget comparison schedules as supplementary information (SI). The budget comparison schedules must show columns for: the original budget; the revised budget; actuals on the budgetary basis; and a variance column. **The budget comparison schedules must be audited and an auditor opinion must be rendered.** A SAS opinion does not meet this requirement. See Section 14.53 of the *AICPA, Audit and Accounting Guide State and Local Governments (2005)*. The auditor must confirm the final adjusted and approved budget with the HED. The auditor opinion on the budgetary SI should follow Example A-14 in AAG-SLV 14.79 (2005) and footnote 3 of 14.79, and include a statement that the audit was made in accordance with generally accepted government auditing standards (GAGAS 5.3). A reconciliation of actual amounts on the budget basis to financial statement accrual basis amounts should be disclosed on the budget comparison schedule. The reconciliation is required only at the “rolled up” level of unrestricted and restricted - all operations. The higher education department (HED) approved the following format for audited budget comparison schedules. This rule requires that the format be used in reporting the budget comparison data as supplementary information.

(a) Unrestricted and restricted - all operations (Schedule 1)
Beginning fund balance: Unrestricted and restricted revenues: State general fund appropriations, federal revenue sources, tuition and fees, land and permanent fund, endowments and private gifts, other
Total unrestricted and restricted revenues
Fund balance budgeted
Total unrestricted and restricted revenues and fund balance budgeted
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, student social and cultural activities, research, public service, internal service, student aid grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness, other (student aid, grants and stipends; and independent operations)

Total unrestricted and restricted expenditures
Change in fund balance net assets (budgetary basis) , ending fund balance
(b) Unrestricted - Non Instruction & General (Schedule 2)
Beginning fund balance: Unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Student social and cultural activities, research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total unrestricted expenditures : net transfers
Change in fund balance (budgetary basis) ,ending fund balance
(c) Restricted - Non-Instruction and General (Schedule 3)
Beginning fund balance: Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Student and social activities, research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total restricted expenditures
Net transfers
Changes fund balance (budgetary basis) , ending fund balance
(d) Unrestricted - instruction and general (Schedule 4)
Beginning fund balance, unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total unrestricted expenditures
Net Transfers
Change in net assets (budgetary basis)
Ending fund balance
(e) Restricted - instruction and general (Schedule 5)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total restricted expenditures
Change in net assets (budgetary basis)

(3) The level of planning materiality required by the State Auditor follows: Institutions must report using the Business Type Activities (BTA) model. The level of planning materiality described in the *AIC, Audit and Accounting Guide, State and Local Governments (2005)*, Section 4.26, must be used for the audit of these institutions. Planning materiality for component units is at the individual component unit level. If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1 NMSA 1978, requires that entity to be audited **regardless of materiality**. See Section 2.2.2.10.A.(1) for more information about contracting for these required audits.

(4) Compensated absence liability should be shown as follows: The statement of net assets should reflect the current portion of compensated absences under current liabilities, and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component unit issues: Legally separate entities that meet the criteria set forth in GASB 14 as amended by GASB 39 to qualify as a component unit of an educational institution must be included in the educational institution's audit report **as a discrete component**

unit. An exemption must be obtained from the state auditor in order to present any component unit as blended. The **same auditor** must audit the component unit and the educational institution unless an exemption is obtained from the state auditor. **These exemptions must be obtained annually.**

(a) If the college or university has no component units there should be a statement to that effect in the notes to the financial statement in the description of the reporting entity.

(b) GASB Statement No. 39, *Determining Whether Certain Organizations Are Component Units*, became effective for financial statements of periods beginning after June 15, 2003 (FY04), and requires that a legally separate, tax-exempt organization should be reported as a component unit of a reporting entity if the primary government is not financially accountable; however, the nature and significance of the relationship with the primary government is such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete. As a result of this statement, many college and university foundations, which were not previously reported as component units, will have to be reported as a component unit of the college or university. See Paragraph (3) above regarding 501(c) 3 component unit organizations that must be audited per statute, regardless of materiality.

(c) Individual component unit budget comparison schedules are required if the component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law.

(d) There is also no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings must be disclosed in the primary government's audit report.

(6) Management discussion and analysis (MD&A): The MD&A analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results is required by this rule for colleges and universities. The analysis should include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

F. PERTAINING TO MUTUAL DOMESTIC WATER ASSOCIATIONS: Associations created pursuant to the Sanitary Projects Act (3-29-1, NMSA 1978) are subject to audit under the Audit Act 12-6-2, NMSA 1978 and this rule. The financial statements should follow the not-for-profit model unless the agency meets

the criteria described in AAG-SLV 1.01 (2005) for being a governmental organization that should use the governmental accounting and financial reporting model. [2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 3-31-06]

2.2.2.13 REVIEW OF AUDIT REPORTS AND WORKING PAPERS:

A. Section 12-6-14(B), NMSA requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract. All audits under contracts approved by the state auditor are subject to review.

(1) Upon receipt of each audit report the office will make a cursory review to determine whether the report is ready for review or is incomplete and/or conspicuously erroneous. Substandard reports will be returned to the IPA with a letter rejecting the report and the reasons for the rejection. The agency will receive a copy of the rejection letter. Reports that are initially accepted will be reviewed as follows.

(2) A preliminary review will be made of all audit reports received for proper reporting and presentation of financial statements, note disclosures and audit findings.

(3) The state auditor notifies the IPA regarding any deficiencies found during the review process. The IPA shall submit related corrections or notification of disagreement with the review comments to the state auditor **within ten working days** of receipt of the deficiency notification.

(4) A copy of the deficiency comments will be mailed to the agency, by the state auditor, if the IPA does not respond to the deficiency notification in a timely manner. These deficiency comments are considered public documents and may be requested by the agency.

(5) If the IPA does not respond to the deficiency notification the state auditor will notify the agency to select a different auditor for future audits.

B. Released audit reports may be subject to a comprehensive desk and working paper review by the state auditor. These review checklists are public documents available on the website at www.saonm.org/pdfguides.html, unless the review is performed in conjunction with a federal agency. It should be noted that any reviews of working papers will include testing of audit firm documentation for:

(1) continuing professional education (CPE) for compliance with GAGAS requirements;

(2) the independence safeguards on nonaudit services, for compliance with GAGAS 3.17 requirements; and

(3) SAS 99 brainstorming; procedures performed to obtain information nec-

essary to identify and assess the risks of material misstatement due to fraud; specific risks that were identified and a description of the auditor's response to those risks; improper revenue recognition as a risk of material misstatement due to fraud; the results of procedures performed to further address the risk of management override of controls; other conditions and analytical relationships that caused the auditor to believe that additional auditing procedures were required and any further related auditor responses; and the nature of the communications about fraud made to management, the audit committee, and others.

C. If during the course of such a quality control review, the state auditor determines that deficiencies noted are significant enough that the audit was not performed in accordance with auditing standards generally accepted in the United States of America and/or this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the working papers and reissue the audit report to the agency, and any others receiving copies;

(2) the number of audit engagements may be limited;

(3) the IPA may be required to submit working papers along with the audit report to the state auditor for review by the office, prior to the release of the report, for some or all audit contracts;

(4) the IPA may be denied the issuance of future audit contracts; and/or

(5) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

D. Results of review:

(1) A letter will be issued upon completion of each report or working paper review to advise the IPA of the results of the review. The IPA is required to respond to all review comments as directed.

(2) Any corrective actions will be approved by the state auditor based on the recommendation of the in-charge reviewer.

(3) The IPA may request a review of the recommended action by the state auditor. If requested, the state auditor will schedule a conference, within fifteen days, to allow the IPA an opportunity to analyze the results of the desk or working paper review and present any information the IPA deems appropriate.

E. Revisions to the audit report: Revisions to the audit reports from reviews conducted by the federal inspector generals and the state auditor will be made by the IPA, to all copies of the audit report held by the agencies and the state auditor.

[2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 3-31-06]

2.2.2.14 CONTINUING EDUCATION AND QUALITY CONTROL

REQUIREMENTS:

A. Per generally accepted government auditing standards (GAGAS) Section 3.45, "Each auditor performing work under GAGAS should complete, every 2 years, at least 80 hours of CPE that directly enhance the auditor's professional proficiency to perform audits and/or attestation engagements. At least 24 of the 80 hours of CPE should be in subjects directly related to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. At least 20 hours of the 80 should be completed in any 1 year of the 2-year period." Per a **recent technical amendment to GAGAS 3.45**, however, audit staff who charge less than 20 percent annually of their time to audits and attestation engagements and do not plan, direct or report on a Yellow Book audit or attestation engagement are required to obtain only the 24 hours described above. This amendment is effective for CPE measurement periods beginning on or after June 30, 2005, and early application is encouraged. The GAO issued Government Auditing Standards: Guidance on GAGAS Requirements for Continuing Professional Education, GAO-05-568G, April 2005. It provides helpful guidance to auditors and audit organizations regarding the implementation of the current Yellow Book CPE requirements. The guide is available at www.gao.gov/govaud/ybcpe2005.pdf.

B. U.S. GAO *Government Auditing Standards, 2003 Revision* (GAGAS), Section 3.49 states "each audit organization performing audits and/or attestation engagements in accordance with GAGAS should have an appropriate internal quality control system in place and should undergo an external peer review." Sections 3.52 and 3.53 require that "Audit organizations performing audits and attestation engagements in accordance with GAGAS should have an external peer review ... at least once every 3 years by reviewers independent of the audit organization being reviewed. The external peer review should determine whether ... the organization's internal quality control system was adequate and whether quality control policies and procedures were being complied with to provide the audit organization with reasonable assurance of conforming with applicable professional standards.

(1) The AICPA PR Section 100 Standards for Performing and Reporting on Peer Reviews section on the "timing of reviews" provides the following information. "A firm's due date for its initial peer review is eighteen months from the date it enrolled in the program or should have enrolled, whichever date is earlier. If a firm

is enrolled in the program, but does not perform engagements requiring it to undergo a peer review, it is not required to undergo a peer review. However, when a firm performs its first engagement requiring a peer review, the firm's due date will be eighteen months from the year-end of that engagement. A firm's subsequent peer review ordinarily has a due date of three years and six months from the year-end of the previous review. When a firm, subsequent to the year-end of its report or engagement review, performs an engagement under the SASs, Government Auditing Standards or examinations of prospective financial statements under the SSAEs that would have required the firm to have a system review, the firm should (a) immediately notify the administering entity and (b) undergo a system review. The system review will be due eighteen months from the year-end of the engagement (for financial forecasts and projections 18 months from the date of report) requiring a system review or by the firm's next scheduled due date, whichever is earlier. Firms that fail to inform the administering entity of the performance of such an engagement will be required to participate in a system review that includes such engagement with a peer review year-end that covers the engagement. A firm's subsequent peer review will be due three years and six months from this peer review year-end."

(2) If the firm is unable to complete its external quality control review by the required due date, it will render the firm ineligible to conduct audits of governmental agencies. **Extension requests to complete the external quality control review that are approved by the administering organization will not be accepted by the state auditor.**

(3) The state auditor requires the location of the external quality control review to be the office of the firm under review, regardless of whether the firm reviewed is a sole practitioner and regardless of the number of firm employees. External quality control reviews performed at a location other than the office of the firm under review will not be accepted by the state auditor.

(4) The IPA firm profile submission to the state auditor requires copies of:

(a) The employing organization of the peer reviewers' quality control review showing an unqualified opinion (this is a special requirement of the state auditor);

(b) external quality control review report for the auditor's firm;

(c) the corresponding letter of comments;

(d) auditor's response to letter of comments;

(e) the letter of acceptance from

the peer review program in which the firm is enrolled; and

(f) a list of the governmental audits reviewed during the peer review. The office assumes that at least one of these will be a New Mexico governmental audit.

(5) Failure to submit the required IPA firm profile documentation, or an opinion less than **modified** on the auditor's peer review, will disqualify the IPA from doing governmental audits.

(6) During the procurement process audit firms shall provide a copy of their most recent external peer review report to the agency upon submitting a bid proposal or offer.

(7) Individuals conducting peer reviews of an audit organization's system of quality control should meet the following requirements per GAGAS 3.53:

(a) Have current knowledge of GAGAS and the government environment relative to the work being reviewed;

(b) be independent (as defined in GAGAS) of the audit organization being reviewed, its staff, and the assignments selected for review;

(c) have knowledge on how to perform a peer review (knowledge can be obtained from on-the-job training, training courses, or both); and

(d) the state auditor also requires that the employing organization of the peer reviewers should have received an unqualified opinion on the review of their organization's system of quality controls.

(8) The New Mexico public accountancy board determined that performing peer review constitutes the practice of public accountancy; therefore, a CPA from another state who enters New Mexico to perform a peer review for a New Mexico CPA firm must file a notification of intent to practice under the substantial equivalency provision.

(9) The reviewer must be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the office.

(10) The review should include (GAGAS 3.54):

(a) "a review of the organization's internal quality control policies and procedures, including related monitoring procedures, audit and attestation engagement reports, audit and attest documentation, and other necessary documents (for example, independence documentation, CPE records, personnel management files related to compliance with hiring, performance evaluation, and assignment policies);"

(b) interviews with various levels of the reviewed organization's professional staff to assess their understanding of and compliance with relevant quality control

policies and procedures;

(c) use of one of the following approaches to selecting assignments for review:

(i) select assignments that provide a reasonable cross section of the assignments performed by the reviewed organization in accordance with GAGAS; or

(ii) select assignments that provide a reasonable cross section of the reviewed organization's work subject to quality control requirements, including one or more assignments performed in accordance with GAGAS.

(d) the review should be sufficiently comprehensive to provide a reasonable basis for concluding whether the reviewed audit organization's system of quality control was complied with to provide the organization with reasonable assurance of conforming with professional standards in the conduct of its work. Reviewers should consider the adequacy and results of the reviewed audit organization's monitoring efforts to efficiently plan its peer review procedures; and

(e) reviewers should prepare a written report(s) communicating the results of the external peer review; the report should indicate the scope of the review, including any limitations thereon, and should express an opinion on whether the system of quality control of the reviewed organization's audit and/or attestation engagement practices was adequate and was being complied with during the year reviewed to provide the audit organization with reasonable assurance of conforming with professional standards for audits and attestation engagements; the report should state the professional standards to which the reviewed audit organization is being held; the report should also describe the reason(s) for any modifications to the opinion; when there are matters that resulted in a modification to the opinion, reviewers should report a detailed description of the findings and recommendation, either in the peer review report or in a separate letter of comment or management letter, to enable the reviewed audit organization to take appropriate actions; the written report should refer to the letter of comment or management letter if such a letter is issued along with a modified report.

C. The state auditor performs its own quality control review of IPA audit reports and working papers. When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding letter of comments, the state auditor will no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor will take into consideration the fact that AICPA peer

reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3-31-06]

See appendices beginning on page 349

Appendix A

Print on Agency Letterhead

Date

Domingo P. Martinez, CGFM, State Auditor
 2113 Warner Circle
 Santa Fe, NM 87505-5499

Dear Mr. Martinez,

In accordance with the requirements of Paragraph (6) of Subsection C of 2.2.2.8 NMAC Requirements for Contracting and Conducting Audits of Agencies, the ___ agency name ___ is recommending that the firm of ___ recommended IPA ___ be the agency's Independent Public Accountant (IPA) for the financial and compliance audit of the agency financial statements for the fiscal year ended June 30, ____; and requesting approval of this selection by the State Auditor.

This section applies only to school districts and universities. This IPA recommendation has been reviewed and approved by our oversight agency the Higher Education Department or the Public Education Department (circle one) as required by Section 12-6-14, NMSA 1978, and as indicated by the following oversight agency signature and date.

 Oversight Agency Signature Printed name of signer Date

List the agency personnel who attended the Office of the State Auditor Rule Update Training for FY06.

_____ Name	_____ Location of Training	_____ Date
_____ Name	_____ Location of Training	_____ Date

Please check the appropriate box:

This is a multi-year proposal and we will be in the period indicated above.

If your agency entered into any contracts with any of the audit firms on the State Auditor's approved list from 1/1/05 until the date this form was completed, with the exception of the FY05 audit contract, please list them here.

Contract Date	Contract Amt	Contract Firm	Services Provided by the Auditor
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____

If you have any questions regarding this IPA recommendation please contact _____ at phone number _____ at the agency office.

Respectfully,

Agency Representative

Enc: Evaluation for the Recommended IPA

[2.2.2 NMAC Appendix A - Rp, 2.2.2 NMAC Appendix A, 3-31-06]

NEW MEXICO STATE AUDITOR'S OFFICE
 Audit Contract Proposal Evaluation Form
 Part One

Name of Agency _____
 Agency Contact _____ Phone # _____
 Audit Firm Name _____ Date Completed _____

<u>Evaluation Criteria</u>		Points	Points Awarded
Section I. <u>Capability of Firm</u>			
A)	The firm has the resources to perform the type and size of audit required. # of firm team members _____ Total audit hours available _____	0-5	
B)	The firm meets independence standards to perform your audit.	0-2	
C)	External Quality Control Review (Peer Review) 1. Peer review results: Obtain most recent copy of the external quality control review report including letter of comments 2. - Opinion received _____ Unmodified 10 Modified 5	0-10	
If report is less than modified (adverse) STOP HERE. FIRM DOES NOT QUALIFY.			
	3. Results of reference checks and agency's prior experience with firm (check should include timeliness, planning, technical expertise, etc.).	0-10	
D)	Organization and completeness of proposal or bid.	0-3	
Section I Total			
Section II. <u>Work Requirements & Audit Approach</u>			
A)	Knowledge of audit objectives, agency needs, and product to be delivered.	0-5	
B)	Proposal or bid contains a sound technical plan and realistic estimate of time to complete major segments of the audit: planning; interim fieldwork; fieldwork; and reporting. Start Date _____ End Date _____	0-5	
C)	Plans for using agency staff, including internal auditors.	0-3	
D)	If the proposal or bid is for a multi-year contract, approach for planning and conducting the work efforts of subsequent years.	0-2	
Section II Total			
Section III. <u>Technical Experience</u>		0-10	
A)	Governmental audit experience of on-site manager Name of on-site manager _____		
B)	Team audit experience: 1. Specialization in your type of agency (e.g., state agencies, schools, hospitals, counties, cities, etc.)	0-10	
	2. GASB 34 and 35 Experience	0-10	
	3. Experience with component units (housing authorities, charter schools, foundations)	0-5	
C)	Attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.	0-5	
Section III Total			
Section IV. <u>Firm Strengths or Weaknesses</u>			
Specify _____		0-5	
Section IV Total			
Total All Sections			

Submit a copy of this form for the proposal selected to the State Auditor along with the Agency recommendation letter.

New Mexico State Auditor's Office
 Agency Audit Contract Proposal Evaluation Form
 Part Two

Name of Agency _____ Phone # _____

Agency Contact _____

Audit Firm _____

Cost is to be evaluated ONLY upon completion of Part One of this two-part evaluation form. Evaluate cost separately for the top THREE CHOICES ONLY from Part One. ADD parts One and Two in making your FINAL recommendation.

EVALUATION CRITERIA

<p>Please note: If you have a multi -year proposal, add the total of each year together to arrive at one total for the combined three year period (example: 3 yr proposal, each years fee is \$5,000 the combined total is \$15,000 which would be used in the calculation below.)</p> <p><u>COMPLETE THE CALCULATION :</u></p> <p>Insert the lowest cost proposal (from all proposals received) and divide it into the cost of the proposal the agency is recommending</p> <p>Times (x) by 10</p> <p style="text-align: right;">\$ _____ = \$ _____ x 10 _____ = Total Points Awarded</p>	Maximum Points	Points Awarded
	10	

Multi-Year Proposal Y (_____ year of _____ year proposal) N

BREAKDOWN	1 st Year		2 nd Year		3 rd Year	
	Hours FYE 6/30/ _	Cost FYE 6/30/ _	Hours FYE 6/30/ _	Cost FYE 6/30/ _	Hours FYE 6/30/ _	Cost FYE 6/30/ _
Financial Statement Audit	_____	_____	_____	_____	_____	_____
Federal Single Audit	_____	_____	_____	_____	_____	_____
Financial Statement Preparation	_____	_____	_____	_____	_____	_____
Other (i.e. housing authorities, charter schools))	_____	_____	_____	_____	_____	_____
SUB TOTAL	_____	_____	_____	_____	_____	_____
Gross Receipts Tax		_____		_____		_____
TOTAL COMPENSATION		=====		=====		=====

SCORE	Maximum Points	Points Awarded
SCORE, Part One: Bring forward score from Part One of Evaluation Form	90	
FINAL SCORE	100	

Evaluated by _____ Date _____
 Name and Title

 Name and Title Date

 Name and Title Date

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
1	Authoritative Status of NCGA Pronouncements and AICPA Industry Audit Guide	On issuance July 1984
2	Financial Reporting of Deferred Compensation Plans Adopted under the Pro visions of Internal Revenue Code Section 457	Financial statements for periods ending after 12/15/86
3	Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements	Financial statements for periods e nding after 12/15/86
4	Applicability of FASB Statement No. 87, "Employers' Accounting for Pensions," to State and Local Government Employers	On issuance September 1986
5	Disclosure of Pension Information by Public Employee Retirement Systems and State an d Local Governmental Employers	Financial reports issued for fiscal years beginning after 12/15/86
6	Accounting and Financial Reporting for Special Assessments	Financial statements for periods beginning after 06/15/87
7	Advance Refundings Resulting in Def easance of Debt	Fiscal periods beginning after 12/15/86
8	Applicability of FASB Statement No. 93, "Recognition of Depreciation by Not -for-Profit Organizations," to Certain State and Local Governmental Entities	On issuance January 1988
9	Reporting Cash Fl ows of Proprietary and Nonexpendable Trust Funds and Governmental Entities that Use Proprietary Fund Accounting	Financial statements for fiscal years beginning after 12/15/89
10	Accounting and Financial Reporting for Risk Financing and Related Insurance I ssues	Public entity risk pools: periods beginning after 06/15/90; Entities other than pools: periods beginning after 06/15/94
11	Measurement Focus and Basis of Accounting - Governmental Fund Operating Systems	Deferred by GASB 17 to periods beginning approximately two years after an implementation standard is issued (early application not permitted)
12	Disclosure of Information on Post -employment Benefits Other than Pension Benefits by State and Local Governmental Employers	Financial reports issued for fis cal years beginning after 06/15/90
13	Accounting for Operating Leases with Scheduled Rent Increases	Proprietary and similar trust funds: prospectively for leases with terms beginning after 06/30/90 Governmental and similar trust funds: Measurement criteri a - prospectively for leases with terms beginning after 06/30/90; Recognition criteria - two changes: one for financial statements for periods approximately two years after an implementation standard is issued (early application not permitted)
14	The Financial Reporting Entity	Financial statements for periods beginning after 12/15/92
15	Governmental College and University Accounting and Financial Reporting Models	Financial statements for periods beginning after 06/15/92

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
16	Accounting for Compensated Absences	Financial statements for periods beginning after 06/15/93
17	Measurement Focus and Basis of Accounting - Governmental Fund Operating Statements: Amendment of the Effective Dates of GASB Statement 11 and Related Statements (an Amendment of GASB Statements 10, 11 and 13)	On issuance June 1993
18	Accounting for Municipal Solid Waste Landfill Closure and Post-closure Care Costs	Financial statements for periods beginning after 06/15/93
19	Governmental College and University Omnibus Statement (an Amendment of GASB Statements 10 and 15)	Pell grants - periods beginning after 06/15/93; Risk financing activities - periods beginning after 06/15/94
20	Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities that use Proprietary Fund Accounting	Financial statements for periods beginning after 12/15/93
21	Accounting for Escheat Property	Financial statements for periods beginning after 06/15/94
22	Accounting for Taxpayer -Assessed Tax Revenues in Governmental Funds	Financial statements for periods beginning after 06/15/94
23	Accounting and Financial Reporting for Refundings of Debt Reported by Proprietary Activities	Financial statements for periods beginning after 06/15/94
24	Accounting and Financial Reporting for Certain Grants and Other Financial Assistance	Financial statements for periods beginning after 06/15/95
25	Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 26 in the same fiscal year
26	Financial Reporting for Post -employment Health Care Plans Administered by Defined Benefit Pension Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 25 in the same fiscal year
27	Financial Reporting for Pensions by State and Local Governmental Employers	Financial statements for periods beginning after 06/15/97 Earlier implementation is encouraged
28	Accounting and Financial Reporting for Securities Lending Transactions	Financial statements for periods beginning after 12/15/95 Earlier implementation is encouraged
29	The Use of Not -for-Profit Accounting and Financial Reporting Principles by Governmental Entities	Financial statements for periods beginning after 12/15/94 For entities that have applied the AICPA Not -for-Profit model but previously have not followed the governmental accounting and financial reporting standards required by Paragraphs 5 and 6 of this statement, the provisions of those governmental standards are effective for financial statements for periods beginning after 12/15/95 Earlier application is encouraged
30	Risk Financing Omnibus - an amendment of GASB Statement No. 10	Financial statements for periods beginning after 6/15/96

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
31	Accounting and Financial Reporting for Certain Investments and for External Investment Pools	Financial statements for periods beginning after 6/15/97
32	Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans	Financial statements for periods beginning after 12/31/98 or when plan assets are held in trust under the requirements of IRC Section 457, subsection (g), if sooner
33	Accounting and Financial Reporting for Non - Exchange Transactions	Financial statements for periods beginning after June 15, 2000 Earlier application is encouraged
34	Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments	<p>The requirements of this Statement are effective in three phases based on a government's total annual revenues in the first fiscal year ending after June 15, 1999. Governments with total annual revenues (excluding extraordinary items) of \$100 million or more (phase 1) should apply this Statement for periods beginning after June 15, 2001. Governments with at least \$10 million but less than \$100 million in revenues (phase 2) should apply this Statement for periods beginning after June 15, 2002. Governments with less than \$10 million in revenues (phase 3) should apply this Statement for periods beginning after June 15, 2003. Earlier application is encouraged. Governments that elect early implementation of this Statement for periods beginning before June 15, 2000, should also implement GASB Statement No. 33, <i>Accounting and Financial Reporting for Non -exchange Transactions</i>, at the same time. If a primary government chooses early implementation of this Statement, all of its component units also should implement this standard early to provide the financial information required for the government - wide financial statements.</p> <p>Prospective reporting of general infrastructure assets is required at the effective dates of this Statement. Retroactive reporting of all major general governmental infrastructure assets is <i>required</i> four years after the effective date on the basic provisions for all major general infrastructure assets that were required or significantly reconstructed, or that received significant improvements, in fiscal years ending after June 30, 1980. Phase 3 governments are encouraged to report infrastructure retroactively, but may elect to report general infrastructure prospectively only.</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
35	Basic Financial Statement - and Management's Discussion and Analysis - For Public Colleges and Universities	Colleges and Universities that are a unit of a state or local government will implement the new standards at the same time as their primary government, generally for fiscal years beginning July 1, 2001.
36	Recipient Reporting for Certain Shared Non - exchange Revenues	This Statement should be implemented simultaneously with Statement 33, for periods beginning after June 15, 2000.
37	Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments: Omnibus (An amendment of GASB Statement No. 21 and No. 34)	<p>This Statement should be implemented simultaneously with Statement 34. For governments that implemented Statement 34 prior to the issuance of this Statement, this Statement's requirements are effective for financial statements for periods beginning after June 15, 2000. Accounting changes adopted to conform to the provisions of this Statement should be applied retroactively, if practical, by restating financial statements for all prior periods presented. If restatement is not practical, the cumulative effect of applying this Statement, if any, should be reported as a restatement of beginning net assets, fund balances, or fund equity, as appropriate, for the earliest period restated. In the period this Statement is first applied, the financial statements should disclose the nature of any restatement and its effect. Also, the reason for not restating prior periods presented should be explained.</p> <p>The provisions of this Statement need not be applied to immaterial items.</p> <p>The requirements of this Statement are effective in three phases based on the revenues of the government as described in paragraph 143 of Statement 34;</p> <ul style="list-style-type: none"> * Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002. * Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002. * Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003. <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
		only if Statement 34 has also been implemented.
		The provisions of this Statement need not be applied to immaterial items.
38	Certain Financial Statement - Note Disclosures	<p>The requirements of this Statement are effective in three phases on the revenues of the government as described in paragraph 143 of Statement 34:</p> <ul style="list-style-type: none"> * Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 20 02. * Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002. * Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003. <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented only if Statement 34 has been implemented.</p> <p>The provision of this Statement need not be applied to immaterial items.</p>
39	Determining Whether Certain Organizations Are Component Units	<p>The requirements of the statement are effective for financial statements for periods beginning after June 15, 2003. Earlier application is encouraged. Adjustments resulting from a change to comply with this statement should be treated as adjustments of prior periods. The financial statements of all prior periods presented should be restated, if practical, to show the financial information of the new reporting entity for all periods. If restatement of the financial statements for prior periods is not practical, the cumulative effect of applying this statement should be reported as a restatement of beginning net assets/fund balance for the earliest period restated.</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
40	Deposit and Investment Risk Disclosures	The requirements of this statement are effective for financial statements for periods beginning after June 15, 2004 (FY 05). Earlier application is encouraged. The Statement addresses common deposit and investment risks related to credit risk, concentration of credit risk, interest rate risk, and foreign currency risk. As an element of interest rate risk, this Statement requires certain disclosures of investments that have fair values that are highly sensitive to changes in interest rates. It requires the deposit and investment policies related to the risks identified in the Statement to be disclosed. The custodial credit risk disclosures previously required by Statement 3 are modified by Statement 40
41	Budgetary Comparison Schedules - Perspective Differences	The provisions of this statement should be implemented simultaneously with Statement 34. For governments that implemented Statement 34 prior to the issuance of Statement 41, the requirements of the Statement are effective for financial statements for periods beginning after June 15, 2002 (FY03). This amendment to Statement No. 34 clarifies the budgetary presentation requirements for governments with significant budgetary perspective differences that result in their not being able to present budgetary comparison information for their general fund and major special revenue funds. These governments are required to present budgetary comparison schedules as required supplementary information (RSI) based on the fund, organization, or program structure that the government uses for its legally adopted budget.
42	Accounting and Financial Reporting for Impairment of Capital Assets and for Insurance Recoveries	The provisions of this statement are effective for fiscal periods beginning after December 15, 2004 (FY06). This statement requires governments to report the effects of capital asset impairments in their financial statements when they occur rather than as a part of the ongoing depreciation expense for the capital asset or upon disposal of the capital asset. The Statement also requires all governments to account for insurance recoveries in the same manner.

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
43	Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans	<p>The requirements of this Statement for OPEB plan reporting are effective one year prior (FY07, FY08, and FY09) to the effective date of the related Statement for the employer (single - employer plan) or for the largest participating employer in the plan (multiple -employer plan). The requirements of the related Statement are effective in three phases based on a government's total annual revenues , as defined in that Statement, in the first fiscal year ending after June 15, 1999 - the same criterion used to determine a government's phase for implementation of GASB 34. The statement establishes uniform financial reporting standards for OPEB plans and supersedes the interim guidance included in Statement No. 26, <i>Financial Reporting for Postemployment Healthcare Plans Administered by Defined Benefit Pension Plans</i>. The approach followed in this Statement generally is consistent with the approach adopted in Statement No. 25, <i>Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans</i> , with modifications to reflect differences between pension plans and OPEB plans.</p>
44	Economic Condition Reporting: The Statistical Section	<p>The provisions of this Statement are effective for statistical sections that are a required part of a CAFR, prepared for periods beginning after June 15, 2005, (FY06). The Statement establishes the objectives of the statistical section and the five categories of information it contains (1) financial trend information; (2) revenue capacity information; (3) debt capacity information; (4) demographic and economic information; and (5) operating information. The more specific requirements of the Statement should be adapted by each type of government in order to meet the overarching objectives.</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
45	Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions	Implementation is required in three phases in FY08, FY09, and FY10, based on a government's total annual revenues in the first fiscal year ending after June 15, 1999. The revenue cutoff points for implementation are the same as those in GASB 34. This Statement establishes standards for the measurement, recognition, and display of OPEB, expense/expenditures and related liabilities (assets), note disclosures, and if applicable, required supplementary information (RSI) in the financial reports of state and local governmental employers. This Statement generally provides for prospective implementation - that is, that employers set the beginning net OPEB obligation at zero as of the beginning of the initial year.
46	Net Assets Restricted by Enabling Legislation	The requirements of this Statement are effective for periods beginning after June 15, 2005, (FY06), with earlier application encouraged. The statement clarifies the meaning of the phrase <i>legally enforceable</i> as it applies to restrictions imposed on net assets.
47	Accounting for Termination Benefits	The requirements of this Statement are effective for periods beginning after June 15, 2005 (FY06), except for termination benefits provided through an existing defined benefit OPEB plan, in which case the Statement should be implemented simultaneously with the requirements of Statement 45. The Statement determines (1) when a liability and expense should be recognized (a) on the accrual basis for voluntary and involuntary termination benefits and (b) on the modified accrual basis; and (2) how health care -related termination benefits should be measured.

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
1	Codification of Auditing Standards and Procedures	See Part II of Cross-References To SASs section
7	Communications Between Predecessor and Successor Auditors	315
8	Other Information in Documents Containing Audited Financial Statements	550
12	Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments	337
19	Client Representation	333
21	Segment Information	435
22	Planning and Supervision	311
25	The Relationship of Generally Accepted Auditing Standards to Quality Control Standards	161
26	Association With Financial Statements	504
29	Reporting on Information Accompanying the Basic Financial Statements in Auditor Submitted Documents	551
31	Evidential Matter	326
32	Adequacy of Disclosure of Financial Statements	431
37	Filings Under Federal Securities Statutes	711
39	Audit Sampling	350
41	Working Papers	339
43	Omnibus Statements on Auditing Standards	150.06; 331.14 350.46; 420.15 901.01; 901.24 901.28
45	Omnibus Statement on Auditing Standards -1983	313; 334
46	Consideration of Omitted Procedures After the Report Date	390
47	Audit Risk and Materiality in Conducting an Audit	312
48	The Effects of Computer Processing on the Audit of Financial Statements	311.03; 311.09-.10; 326.12
50	Reports on the Application of Accounting Principles	625
51	Reporting on Financial Statements Prepared for Use in Other Countries	534
52	Omnibus Statement on Auditing Standards -1987	551.15; 558
53	The Auditors Responsibility to Detect and Report Errors and Irregularities	316A
54	Illegal Acts by Clients	317
56	Analytical Procedures	329
57	Auditing Accounting Estimates	342
58	Reports on Audited Financial Statements	508
59	The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern	341
60	Communication of Internal Control Related Matters Noted in an Audit	325
61	Communication With Audit Committees	380
62	Special Reports	623
64	Omnibus Statement on Auditing Standards -1990	341.12; 508.83; 543.16

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

SAS No.	Title	AU Section
65	The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements	322
67	The Confirmation Process	330
69	The Meaning of <i>Present Fairly in Conformity With Generally Accepted Accounting Principles</i> in the Independent Auditor's Report	411
70	Reports on the Processing of Transactions by Service Organizations	324
71	Interim Financial Information	722
72	Letters for Underwriters and Certain Other Requesting Parties	634
73	Using the Work of a Specialist	336
74	Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance	801
76	Amendments to Statement on Auditing Standards No. 72, <i>Letters for Underwriters and Certain Other Requesting Parties</i>	634.01; 634.09; 634.10; 634.34 AT 300.01
77	Amendments to Statements on Auditing Standards No. 22, <i>Planning and Supervision</i> , No. 59, <i>The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern</i> , and No. 62, <i>Special Reports</i>	311.05; 341.13; 544.02; 544.04; 623.05; 623.08
78	Consideration of Internal Control in a Financial Statement Audit: An Amendment to Statement on Auditing Standards No. 55	319
79	Amendment to Statement on Auditing Standards No. 58, <i>Reports on Audited Financial Statements</i>	508
80	Amendment to Statement on Auditing Standards No. 31, <i>Evidential Matter</i>	326
81	Auditing Investments	332
82	Consideration of Fraud in a Financial Statement Audit	316
83	Establishing an Understanding with the Client	310
84	Communications Between Predecessor and Successor Auditors	315
85	Management Representations	333
86	Amendment to SAS No. 72, Letters for Underwriters and Certain Other Reporting Parties. Amendment is effective for comfort letters issued on or after June 30, 1998.	634
87	Restricting the Use of an Auditor's Report Statement is effective for reports issued after December 31, 1998	532
88	Service Organization and Reporting on Consistency	324; 420
89	Audit Adjustments	310.06; 333.06, 333.16; 380.09; and 380.10
90	Audit Committee Communications	380.03; 380.11; and 722.25-.27
92	Auditing Derivatives Instruments, Hedging Activities and Investments in Securities	332
93	Omnibus Statement on Auditing Standards - 2000	315.02; 315.12 411 (title) 411.01; 508.08 and 622

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
94	The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit	319
95	Generally Accepted Auditing Standards	150
96	Audit Documentation	339
97	N/A	
98	Omnibus Statement on Auditing Standards -2002	150.05 161.02 and .03 312.34-41 324 508.65 558.08 & .10 558.02 561.03 560.01 530.03-.05
99	Consideration of Fraud in a Financial Statement Audit	230 336
100	Interim Financial Information	722
101	Auditing for Fair Value Measurements and Disclosures	Guidance on auditing fair value measurements and disclosures - Effective FY04, earlier application permitted
102	Defining Professional Requirements in Statements on Auditing Standards – The SAS language “must” or “is required” must be complied with. However, if the SAS language used is “should,” the auditor is required to comply if the presumed circumstances exist. But in rare instances the auditor may depart if he/she documents the justification and how alternative procedures sufficed.	This SAS was effective upon issuance.
103	Audit Documentation – This SAS supersedes SAS 96 regarding audit documentation requirements. Among other changes in audit documentation requirements, the audit report should not be dated before documentation review, financial statement preparation and management assertion regarding responsibility for the financial statements.	This SAS is effective for financial statement for periods ending on or after December 15, 2006, (FY07), with earlier application permitted

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2006

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Grant County:									
General ad valorem 1996	\$2,425,000	\$ -	\$2,419,667	\$ -	\$2,419,667	\$ -	\$5,333	\$ -	\$ -
General ad valorem 1997	2,433,762	50	2,428,733	50	2,428,733	-	5,000	-	29
General ad valorem 1998	2,475,960	500	2,471,071	500	2,471,071	-	4,333	-	556
General ad valorem 1999	2,476,000	200	2,471,152	200	2,471,152	-	3,000	-	1,848
General ad valorem 2000	2,477,989	700	2,471,810	700	2,471,810	1,844	2,798	-	3,381
General ad valorem 2001	2,475,896	-	2,467,744	-	2,467,744	1,995	2,654	-	5,498
General ad valorem 2002	2,476,998	2,442	2,461,329	2,442	2,461,329	1,805	2,500	-	13,169
General ad valorem 2003	2,484,500	27,558	2,450,366	27,558	2,450,366	-	-	-	34,134
General ad valorem 2004	2,485,000	488,209	2,317,271	488,209	2,317,271	-	-	-	167,729
General ad valorem 2005	2,490,000	1,942,523	1,942,523	1,942,523	1,942,523	-	-	-	547,477
Total General ad valorem	24,701,105	2,462,182	23,901,666	2,462,182	23,901,666	5,644	25,618	-	773,821
Non-rendition fees 1996	6,500	-	6,475	-	6,475	-	25	-	-
Non-rendition fees 1997	6,500	-	6,450	-	6,450	-	50	-	-
Non-rendition fees 1998	6,500	-	6,445	-	6,445	-	55	-	-
Non-rendition fees 1999	6,500	-	6,425	-	6,425	-	75	-	-
Non-rendition fees 2000	6,500	-	6,475	-	6,475	-	25	-	-
Non-rendition fees 2001	6,520	-	6,450	-	6,450	-	70	-	-
Non-rendition fees 2002	6,520	-	6,460	-	6,460	-	60	-	-
Non-rendition fees 2003	6,520	-	6,420	-	6,420	100	100	-	-
Non-rendition fees 2004	6,520	-	6,425	-	6,425	95	95	-	-
Non-rendition fees 2005	6,520	6,520	6,520	6,520	6,520	-	-	-	-
Total Non-rendition fees	65,100	6,520	64,545	6,520	64,545	195	555	-	-
Copper production 1996	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1997	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1998	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1999	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2000	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2001	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2002	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2003	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2004	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2005	1,598,437	1,598,437	1,598,437	1,598,437	1,598,437	-	-	-	-
Total Copper production	15,980,437	1,598,437	15,980,437	1,598,437	15,980,437	-	-	-	-
Re-appraisal program 1996	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1997	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1998	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1999	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2000	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2001	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2002	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2003	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2004	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2005	27,808	27,808	27,808	27,808	27,808	-	-	-	-
Total Re-appraisal program	278,080	27,808	278,080	27,808	278,080	-	-	-	-

Appendix E

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2006

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Hospital bond 1996	107	-	107	-	107	-	-	-	-
Hospital bond 1997	107	-	107	-	107	-	-	-	-
Hospital bond 1998	107	-	107	-	107	-	-	-	-
Hospital bond 1999	107	-	107	-	107	-	-	-	-
Hospital bond 2000	107	-	107	-	107	-	-	-	-
Hospital bond 2001	107	-	107	-	107	-	-	-	-
Hospital bond 2002	107	-	107	-	107	-	-	-	-
Hospital bond 2003	107	-	107	-	107	-	-	-	-
Hospital bond 2004	107	-	107	-	107	-	-	-	-
Hospital bond 2005	107	107	107	107	107	-	-	-	-
Total Hospital bond	1,070	107	1,070	107	1,070	-	-	-	-
Total Grant County	41,025,792	4,095,054	40,225,798	4,095,054	40,225,798	5,839	26,173	-	773,821
Municipalities:									
City of Bayard 1996	\$16,500	-	\$16,500	\$ -	\$16,500	\$ -	\$ -	\$ -	-
City of Bayard 1997	16,500	-	16,480	-	16,480	-	20	-	-
City of Bayard 1998	16,500	-	16,475	-	16,475	-	25	-	-
City of Bayard 1999	16,500	-	16,500	-	16,500	-	-	-	-
City of Bayard 2000	16,500	-	16,500	-	16,500	-	-	-	-
City of Bayard 2001	16,500	-	16,433	-	16,433	-	67	-	-
City of Bayard 2002	16,500	-	16,455	-	16,455	-	45	-	-
City of Bayard 2003	16,500	-	16,400	-	16,400	100	100	-	-
City of Bayard 2004	16,500	901	16,450	901	16,450	50	50	-	-
City of Bayard 2005	16,500	16,000	16,500	16,000	16,500	-	-	-	-
Total City of Bayard	165,000	16,901	164,693	16,901	164,693	150	307	-	-
Village of Hurley 1996	8,000	-	7,975	-	7,975	-	25	-	-
Village of Hurley 1997	8,000	-	8,000	-	8,000	-	-	-	-
Village of Hurley 1998	8,000	-	7,970	-	7,970	-	30	-	-
Village of Hurley 1999	8,000	-	8,000	-	8,000	-	-	-	-
Village of Hurley 2000	8,000	-	7,950	-	7,950	-	50	-	-
Village of Hurley 2001	8,000	-	7,940	-	7,940	-	60	-	-
Village of Hurley 2002	8,000	-	7,930	-	7,930	-	70	-	-
Village of Hurley 2003	8,000	-	7,925	-	7,925	-	75	-	-
Village of Hurley 2004	8,000	43	7,950	43	7,950	50	50	-	-
Village of Hurley 2005	8,000	8,000	8,000	8,000	8,000	-	-	-	-
Total Village of Hurley	80,000	8,043	79,640	8,043	79,640	50	360	-	-
Village of Santa Clara 1996	5,000	-	4,950	-	4,950	-	50	-	-
Village of Santa Clara 1997	5,000	-	4,975	-	4,975	-	25	-	-
Village of Santa Clara 1998	5,000	-	4,990	-	4,990	-	10	-	-
Village of Santa Clara 1999	5,000	-	4,950	-	4,950	-	50	-	-
Village of Santa Clara 2000	5,000	-	4,960	-	4,960	-	40	-	-

Appendix E

STATE OF NEW MEXICO
 (NAME) COUNTY TREASURER'S
 PROPERTY TAX SCHEDULE
 FOR THE YEAR ENDED JUNE 30, 2006

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Village of Santa Clara 2001	5,000	-	4,970	-	4,970	-	30	-	-
Village of Santa Clara 2002	5,000	-	5,000	-	5,000	-	-	-	-
Village of Santa Clara 2003	5,000	-	4,950	-	4,950	10	50	-	-
Village of Santa Clara 2004	5,000	708	4,955	708	4,955	20	45	-	-
Village of Santa Clara 2005	5,000	5,000	5,000	5,000	5,000	-	-	-	-
Total Village of Santa Clara	50,000	5,708	49,700	5,708	49,700	30	300	-	-
Town of Silver City 1996	205,287	-	205,287	-	205,287	-	-	-	-
Town of Silver City 1997	205,287	-	205,187	-	205,187	-	100	-	-
Town of Silver City 1998	205,287	-	205,237	-	205,237	-	50	-	-
Town of Silver City 1999	205,287	-	205,262	-	205,262	-	25	-	-
Town of Silver City 2000	205,287	-	205,257	-	205,257	-	30	-	-
Town of Silver City 2001	205,287	-	205,262	-	205,262	-	25	-	-
Town of Silver City 2002	205,287	-	205,287	-	205,287	-	-	-	-
Town of Silver City 2003	205,287	-	205,237	-	205,237	50	50	-	-
Town of Silver City 2004	205,287	-	205,262	-	205,262	25	25	-	-
Town of Silver City 2005	205,287	205,287	205,287	205,287	205,287	-	-	-	-
Total Town of Silver City	2,052,870	205,287	2,052,565	205,287	2,052,565	75	305	-	-
Total Municipalities	2,347,870	235,939	2,346,598	235,939	2,346,598	305	1,272	-	-
Grand Total	\$43,373,662	\$4,330,993	\$42,572,396	\$4,330,993	\$42,572,396	\$6,144	\$27,445	\$ -	\$773,821

[2.2.2 NMAC Appendix E - Rp, 2.2.2 NMAC Appendix E, 3-31-06]

STATE OF NEW MEXICO
AUDIT CONTRACT ADDENDUM
FOR SUBCONTRACTOR

Pursuant to Subsection H of 2.2.2.8 NMAC Requirements for Contracting and Conducting Audits of Agencies the Contractor hereby enters into an agreement with _____, hereinafter referred to as the Subcontractor, to subcontract a portion of the services to be performed under this audit contract.

The subcontractor shall perform the following portion(s) of the contracted audit services:

_____.

Responsibility for the audit will

_____ Remain with the Contractor; or
_____ Be shared between the Contractor and Subcontractor.

The audit contract will be signed by

_____ The Contractor; or
_____ The Contractor and the Subcontractor.

The method used to pay the subcontractor will be

_____.

SUBCONTRACTOR

CONTRACTOR

(Name)
BY: _____
TITLE: _____
DATE: _____

(Name)
BY: _____
TITLE: _____
DATE: _____

AGENCY

STATE AUDITOR

(Name)
BY: _____
TITLE: _____
DATE: _____

BY: _____
DOMINGO P. MARTINEZ, CGFM
DATE: _____

[2.2.2 NMAC, Appendix F - N, 3-31-06]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.1 NMAC, Sections 7, 10, 12, and 13, also adding new Sections 14, 15 and 16 effective 4/10/06.

16.4.1.7 DEFINITIONS:

A. "Chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescription and administration of all natural agents in all forms to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs.

B. "Board" means the New Mexico board of chiropractic examiners.

C. "Chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act.

D. "Chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician.

E. "Advertising" means any communication whatsoever, disseminated by any means whatsoever, to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

F. "Chiropractic adjustment" means the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point on the anatomy for the purpose of creating a desired angular movement in the skeletal joint structures in order to eliminate or decrease interference with neural transmission or to correct or attempt to correct a ver-

tebral subluxation using, as appropriate, short lever, high velocity, low amplitude line of correction force to achieve the desired angular movement or neuromuscular reflex response.

G. "Mobilization" means a non-thrusting manual therapy involving movement of a joint within its physiological range of motion. Mobilization is a passive movement within the physiological joint space administered by a clinician for the purpose of increasing normalizing overall joint range of motion.

H. "Spinal manipulation or articular manipulation" means the application of a direct thrust or leverage to move a joint of the spine or extremity articulation to the parapsycho-physiologic end range movement but without exceeding the limits of anatomical integrity.

I. "Vertebral subluxation" means a complex of functional, structural or pathological articular changes, or combination thereof, that compromise articular junction, neural integrity and may adversely influence organ system function or general health and well being.

J. "Impairment fee" means: that in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an impairment fee to be set aside for the purpose of the impaired practitioners program.

K. "NBCE" national board of chiropractic examiners.

L. "PACE" providers of approved continuing education.

M. "Application for examination" applicants applying for licensure by examination in New Mexico who have not yet successfully completed the NBCE examinations and who would like to take the New Mexico board exam prior to completing the NBCE must apply for application by examination.

N. "Licensure by examination" applicants applying for licensure by examination in New Mexico who have taken and passed the NCBE and the board practical examination must apply for licensure by examination.

O. "Complaint/review committee" an ad hoc committee established by the board to review all complaints and applicants with background findings. Complaint/review committee shall consist of (1) one professional board member, (1) one chiropractor with an active license for 5 years in New Mexico in good standing, the boards executive director, boards compliance liason, and boards investigator. Recommendations regarding the complaints and licensure of the applicants will be given to the board at its next scheduled meeting.

P. "Background findings" the board may deny, stipulate, or otherwise

limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is a danger to patients or is guilty of violating any of the provisions of the Chiropractic Physicians Practice Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall formally accept the approval of the application at the next scheduled meeting.

Q. "Chiropractic acupuncture" means those techniques, methods and principles of acupuncture taught in standard colleges of chiropractic that are used as a physiological therapeutic adjunct to the core chiropractic treatment methods.

[3/1/72, 9/18/80, 2/27/87, 3/5/93, 11/16/97, 10/31/98; 16.4.1.7 NMAC -Rn & A, 16 NMAC 4.1.7, 1/15/2005; A, 4/10/06]

16.4.1.10 DUPLICATE LICENSE: A duplicate license may be granted by the board to any practitioner upon proof of loss of the original license or an affidavit of need and payment of a fee as set forth in ~~Paragraph (5) of~~ Subsection A of 16.4.1.13 NMAC.

[10/30/69, 2/27/87, 11/16/97, 10/31/98; 16.4.1.10 NMAC - Rn, 16 NMAC 4.1.10, 1/15/2005; A, 4/10/06]

16.4.1.12 ADVERTISING:

A. Statement of policy: It is the policy of the board that advertising by licensed practitioners of chiropractic should be regulated in order to fulfill the duty of the state of New Mexico to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the state of New Mexico as construed by the United States supreme court and the New Mexico supreme court. To that end, the board permits the dissemination of legitimate information to the public concerning the science of chiropractic and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading or confusing advertising. Advertising not contrary to the prohibitions in this rule shall be deemed an appropriate means of informing the public of the availability of professional services.

B. Certain advertising pro-

hibited:

(1) Any chiropractor who disseminates or causes to be disseminated or allows to be disseminated any advertising which is in any way fraudulent, false, deceptive, misleading or confusing, shall be deemed to be in violation of the Chiropractic Physician Practice Act.

(2) Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

(a) advertising which contains a misrepresentation of any fact or facts;

(b) advertising which, because of its contents or the context in which it is presented, fails to disclose relevant or material facts or makes only partial disclosure of relevant or material facts;

(c) advertising which makes claims of, or conveys the impression of superior professional qualifications which cannot be substantiated by the chiropractor;

(d) advertising which contains distorted claims or statements about any individual chiropractor, chiropractic group or chiropractic office, clinic or center;

(e) advertising which creates unjustified expectations of beneficial treatment or successful cures;

(f) advertising which guarantees the results of any service, painless treatment, or which promises to perform any procedure painlessly;

(g) advertising which in any way appeals to fears, ignorance or anxieties regarding a persons state of health or physical or mental well-being;

(h) advertising which in any way intimidates or exerts undue pressure on the recipient;

(i) advertising which fails to conspicuously identify the chiropractor or chiropractors referred to in the advertising as practitioners of chiropractic by use of the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic", or "doctors of chiropractic";

(j) advertising which fails to be conspicuously identified as "chiropractic" advertising;

(k) advertising which fails to conspicuously identify the chiropractic practice, office, clinic or center being advertised by a name which includes the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic" or "doctors of chiropractic";

(l) advertising which invades the field of practice of other healthcare practitioners when the chiropractor is not licensed to practice such profession;

(m) advertising which appears in a classified directory or listing, or otherwise under a heading which, when considered alone or together with the advertisement,

does not accurately convey the professional status of the chiropractor or the professional services being advertised;

(n) advertising which concerns a transaction that is in itself illegal;

(o) advertising which employs testimonials which, by themselves or when taken together with the remainder of the advertisement intimidate, exert undue pressure on, or otherwise improperly influence the recipient.

C. Advertising which offers gratuitous services or discounts in connection with professional services; provided, however, that advertising may offer gratuitous services or discounts if:

(1) such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services which may be needed and/or appropriate in individual cases, and the possible range of such additional charges if such charges may be incurred;

(2) such advertising is not otherwise false, fraudulent, deceptive, misleading or confusing;

(3) such advertising offering a "spinal examination" or "scoliosis examination" or using any other similar phrase includes, at a minimum, the following tests or procedures: blood pressure, weight, height, reflexes, pulse, range of motion and orthopedic tests appropriate to the history; and

(4) such advertising offering "an examination" or using any other similar phrase includes the taking of a history of the patient as it relates to the presenting complaints, and a comprehensive neurological, orthopedic, chiropractic and physical examination including, where necessary, the taking, developing and interpretation of x-rays and the performance and interpretation of laboratory or other specialized tests when necessary to establish a diagnosis; such x-rays and laboratory and other specialized tests must constitute a diagnostically complete study.

D. Advertisements may quote fixed prices for specific routine services if such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services and the possible range of such additional charges if such charges may be incurred. A routine service is one which is not so unique that a fixed rate cannot meaningfully be established.

E. Chiropractors or their agents who engage in telemarketing are required to inform the parties they call at the start of the call:

(1) who they are (caller's name);

(2) who they represent (clinic/doctor); and

(3) chiropractors engaging in telemarketing, either directly or through others,

shall keep a log to include date, telephone number, and the name of every person called; all such chiropractors shall keep such logs for a period of two (2) years from the date of the telemarketing.

F. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall misrepresent to the person called any association with an insurance company or another chiropractor or group of chiropractors, nor shall such solicitor promise successful chiropractic treatment of injuries, or make any other misrepresentation of whatever kind for the purpose of selling chiropractic services.

G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.

H. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall make more than one telephone call to any telephone number unless requested by the recipient to call again.

I. No chiropractor shall advertise directly or indirectly, through any device or artifice, that the advertising chiropractor will not collect from any prospective patient, that patient's insurance deductible or co-payment obligations arising by virtue of any medical insurance policy providing for the payment, in whole or in part, of any chiropractor's charge.

J. No applicant for licensure to practice chiropractic, and no unlicensed practitioner, shall advertise chiropractic services in this state in any way.

K. All advertisements by a chiropractor must include the full name of the chiropractor as it appears on his or her chiropractic license followed by the letters D.C. or the designation "chiropractor", "chiropractic physician" or "doctor of chiropractic".

L. Any written form of solicitation being distributed to individuals whose identities are known through the use of any form of public record, including but not limited to police reports, shall be reviewed and approved by the board. Unless specifically disapproved by the committee designated by the board the copy submitted may be used for patient solicitation. If approved or disapproved, that information shall be communicated to the submitting doctor within 30 days of submission. The submitting physician has the right to request a determination be made by the full board at its next scheduled meeting.

M. Any direct, individual contact by a licensee or the agent of a

licensee with prospective patients through the use of public records, including but not limited to police or accident reports is prohibited.

[3/1/72, 2/27/87, 9/18/80, 3/5/93, 10/31/93, 11/16/97, 10/31/98; 16.4.1.12 NMAC - Rn & A, 16 NMAC 4.1.12, 1/15/2005; A, 4/10/06]

16.4.1.13 ADMINISTRATIVE FEES:

A. In accordance with Section 61-4-7.G and Section 61-4-13.B of the New Mexico Chiropractic Physicians Practice Act, NMSA 1978, the board of chiropractic examiners establishes the following nonrefundable fees:

(1) application fees:
(a) licensure by examination \$325;

(b) licensure ~~[by endorsement]~~ without examination \$625;

(c) temporary licensure \$50;
(d) reinstatement of license \$125 (in addition to back renewal and penalty fees for each year, not to exceed two years);

(e) application for examination \$325;

(2) annual renewal fees:
(a) active \$300;
(b) inactive \$100;
(c) impairment fee of \$25 in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60 per renewal period.

(3) penalty for late renewal \$100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed \$500).

(4) continuing education fee \$50.

(5) miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:

- (a) photocopying;
- (b) written license verifications;
- (c) list of licensees;
- (d) duplicate licenses;
- (e) duplicate renewal certificate;
- (f) copies of statutes, rules and regulations.

B. The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings regarding complaints against chiropractic physicians.

[3/22/95, 11/16/97, 10/31/98, 1/29/99; 16.4.1.13 NMAC - Rn & A, 16 NMAC 4.1.13, 1/15/2005; A, 4/10/06]

16.4.1.14 INSPECTION OF PUBLIC RECORDS: The board operates in compliance with the Inspection of Public Records Act, NMSA 1978 Sections 14-2-1

through 14-2-16. The board administrator is the custodial of the board's records.

[16.4.1.14 NMAC - N, 4/10/06]

16.4.1.15 MALPRACTICE INSURANCE: Chiropractic physicians shall maintain continuous malpractice insurance coverage in amounts equal to or greater than the amounts defined in the Medical Malpractice Act NMSA 1978 41-5-5 A (1).

[16.4.1.15 NMAC - N, 4/10/06]

16.4.1.16 PRE-PAID TREATMENT PLANS: Chiropractic physicians accepting pre-payment for services planned but not yet delivered must:

A. Establish an escrow account to hold all pre-payment funds.

(1) Funds may be removed from the escrow account following the delivery of services in such amounts equal to the chiropractors usual and customary charges for like services with any discounted percentage contained in the pre-paid agreement for the contracted treatment plan.

(2) Funds received in advance of the day services are delivered must be deposited into the escrow account in a timely manner.

B. The patient's file must contain the proposed treatment plan including enumeration of all aspects of evaluation, management and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.

(1) The patient's financial file must contain documents outlining any necessary procedures for refunding unused payment amounts in the event that either the patient or the doctor discharge the others services or therapeutic association.

(2) The treatment plan in such cases were prepayment is contracted must contain beginning and ending dates and a proposed breakdown of the proposed treatment frequency, types of modalities and procedures included in the contracted treatment and methods of evaluating the patients progress or serial outcome assessment plan and method of recording or assessing patient satisfaction.

C. A contract for services and consent of treatment document must be maintained in the patient's file that specifies the condition for which the treatment plan is formulated, prognosis and alternate treatment options.

D. The chiropractic physician is responsible for providing all treatment appropriate and necessary to address and manage the condition including unforeseen exacerbations or aggravations, within the chiropractic physicians licensure, that may occur during the course of time for

which the contract is active. This does not include alternative services procured by the patient or treatment by providers other than the treating chiropractor or those under the chiropractors direct supervision.

E. If nutritional products or other hard goods including braces, supports or patient aids are to be used during the proposed treatment plan the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee.

[16.4.1.16 NMAC - N, 4/10/06]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.18 NMAC, Sections 6, 8, 9 and 12 effective 4/10/06.

16.4.18.6 OBJECTIVE: To establish practice procedures to include diagnostic procedures, meridian therapy/chiropractic acupuncture, obstetrics, invasive therapeutic procedures, imaging examinations, chiropractic rehabilitation of the neuromusculoskeletal system, manipulation under anesthesia and spinal manipulation.

[11/16/97; 16.4.18.6 NMAC - Rn & A, 16 NMAC 4.18.6, 1/15/2005; A, 4/10/06]

16.4.18.8 DIAGNOSTIC PROCEDURES:

A. Chiropractic physicians being primary care providers are authorized to perform diagnostic procedures specified in this regulation, on the general population ranging from pediatrics through geriatrics, which shall include the authority to perform and take.

(1) Medical case history.

(2) Physical examination of all body systems including, but not limited to:

(a) skin, hair, nails, head, eyes, ears, nose, throat and teeth;

(b) cardio-vascular and respiratory system, including auscultation;

(c) thorax and abdomen, including breast and rectal examination, when clinically appropriate;

(d) genito-urinary and reproductive system, to include vaginal and prostate examination, when clinically appropriate;

(e) musculo-skeletal system;

(f) neurological system.

B. Authority to order diagnostic procedures. Chiropractic physicians are authorized to order any diagnostic procedure reasonably necessary to clinically correlate a physical examination to a diagnostic impression; which shall include, but not be limited to laboratory procedures

involving the collection of human fluids, such as saliva, blood, urine, vaginal and seminal fluids, hair, feces and special imaging, such as x-ray; CT scan, MRI, nuclear scans, ultrasonography, thermography, B.E.A.M., EEG, EKG, ECG and surface or needle EMG.

C. Authority to perform diagnostic procedures.

(1) Chiropractic physicians are authorized required to perform appropriate diagnostic procedures reasonably necessary to clinically correlate a physical examination to a diagnostic impression, (excluding surgical procedures and invasive procedures not herein specified), including but not limited to the collection and testing of human fluids, such as saliva, blood, urine, vaginal and seminal fluids, hair, feces, and conventional radiography.

(2) Chiropractic physicians who are trained in a course of doctoral or post-doctoral studies certified with an accredited institution recognized by the board are authorized to perform diagnostic procedures, including but not limited to MRI, CT, nuclear scans, ultrasonography; thermography, B.E.A.M., EEG, EKG, ECG and surface or needle EMG.

[5/4/94, 11/16/97; 16.4.18.8 NMAC - Rn & A, 16 NMAC 4.18.8, 1/15/2005; A, 4/10/06]

16.4.18.9 MERIDIAN THERAPY / CHIROPRACTIC ACUPUNCTURE:

A. Chiropractors who practice meridian therapy must do so in conjunction with standard chiropractic adjusting and/or manipulative techniques chiropractic acupuncture/meridian therapy shall use those terms and shall not advertise or promote themselves publically as being doctors of oriental medicine, acupuncturists or doctors of acupuncture unless also licensed pursuant to the Acupuncture and Oriental Medicine Act Section 61-14A-1 et seq.

B. Chiropractors who practice chiropractic acupuncture meridian therapy may not advertise or promote themselves in the media to be acupuncturists unless licensed pursuant to the Acupuncture Act.

C. Chiropractors licensed by examination after 7-1-05 intending to include chiropractic acupuncture within their practice procedures must have successfully completed the chiropractic acupuncture examination administered by the NBCE.

[10/30/69, 2/28/87, 9/6/91, 5/2/92, 11/16/97; 16.4.18.9 NMAC - Rn, 16 NMAC 4.18.9, 1/15/2005; A, 4/10/06]

16.4.18.12 CHIROPRACTIC EXERCISE AND THERAPUTIC

TREATMENT OF THE NEUROMUSCULOSKELLETAL SYSTEM:

Chiropractic physicians may prescribe or administer all necessary mechanical, hygienic and sanitary measures incident to the care of the body including but not limited to air, sound, cold, diet, nutritional adjuncts, exercise, heat, light, massage, physical culture, rest, ultrasound, water, oxygen and electricity and other devices used for the delivery of chiropractic physiologic therapeutic procedures.

[16.4.18.12 NMAC - N, 1/15/2005; A, 4/10/06]

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS LIBRARY DIVISION

This is an amendment to 4.5.7 NMAC Sections 1, 8, 9, 10 and 11. This amendment changes Part 7 name of 4.5.7 NMAC, effective 4-01-06.

TITLE 4 C U L T U R A L RESOURCES CHAPTER 5 STATE LIBRARY PART 7 REQUIREMENTS GOVERNING CONDUCT OF AND USE BY PATRONS AT THE NEW MEXICO STATE LIBRARY

4.5.7.1 ISSUING AGENCY:
[Office] Department of Cultural Affairs -
New Mexico State Library Division.

[4.5.7.1 NMAC - N, 07-31-00; A, 04-01-06]

4.5.7.8 PROHIBITED CONDUCT:

A. [~~Conduct that is disorderly, loud, harassing, threatening to another person on the library premises or behaving in a manner which reasonably can be expected to disturb other persons on the library premises or interfere with the use of the library by other patrons or library staff.~~] Harassing other people or employees, including physical, sexual or verbal abuse.

B. Bringing animals other than guide dogs inside the library building.

C. Defacing or destroying library property.

D. Eating or drinking in the library building except in areas such as the library lobby where such conduct is permitted.

E. Fighting.

F. Leaving children under the age of ~~six~~ twelve years old unattended by a parent or adult.

G. Using sports equipment i.e. roller skates, roller blades or skateboards. These must be placed in lockers and

if oversized carried at all times.

H. Sleeping [~~overnight~~].

I. Smoking inside the library building.

J. Use of staff phones [~~for personal use~~], cell phones and electronic devices audible to others.

(1) Cell phones must be placed on vibrate mode.

(2) Calls must be made or answered in the lobby areas.

K. Carrying firearms and weapons onto the library premises, except [~~for~~] by certified law enforcement officers.

L. Possessing illegal drugs, alcohol or violating any civil or criminal laws.

M. Offensive body hygiene which constitutes a nuisance to others.

N. Selling soliciting or panhandling (approaching citizens with items for sale or pleas for donations).

O. Unreasonably impeding the movement of others (blocking entrances, exits or aisles) or creating a safety hazard by inappropriate placement of personal belongings in the building.

P. Using public restrooms to shave, bathe or wash hair.

Q. Distributing or posting printed materials or literature without prior approval from librarians.

R. Failing to wear proper clothing i.e. footwear or shirts at all times.

S. Being in the Garrey Carruthers New Mexico state library building before or after operating hours without the permission of an authorized employee.

T. Talking loudly, or engaging in other disruptive or threatening behavior including making excessive noise.

U. Viewing of pornography.

V. Transmission of harassing or obscene messages.

W. Conducting commercial business.

X. Downloading of electronic music, video, or text in violation of the copyright act.

Y. Downloading or installation of computer software.

[4.5.7.8 NMAC - N, 07-31-00; A, 04-01-06]

4.5.7.9 GUIDELINES FOR USE OF SOUTHWEST ROOM:

A. All researchers and visitors must sign the daily log as they enter the southwest room of the New Mexico state library.

B. Boxes, briefcases, umbrellas, backpacks, purses, folders, coats, newspapers, or other large containers must be placed in lockers. Lockers are provided on a first-come, first-serve basis. Lockers are available for a quarter.

C. Computers are provid-

ed for library catalog searches. Internet searches exceeding five minutes should be conducted at the computer stations in the library on the upper level.

[4.5.7.9 NMAC - N, 07-31-00; 4.5.7.9 NMAC - N, 4-01-06]

~~[4.5.7.9]~~ **4.5.7.10** **REPORTING VIOLATIONS:** Patrons should immediately report any violations of these rules to a library staff member. ~~[Library staff]~~ The state librarian may request that the patron leave the library premises and ~~[a documented]~~ an incident report of the ~~[incident]~~ violation will be completed by the library staff and provided to library management.

[4.5.7.10 NMAC - N, 07-31-00; 4.5.7.10 NMAC - Rn, 4.5.7.9 NMAC & A, 04-01-06]

~~[4.5.7.10]~~ **4.5.7.11 VIOLATIONS:** Any patron not abiding by these rules of conduct may be asked to leave the state library premises. If necessary, the library employees shall contact the police or other law enforcement officer. Any patron who is found to have violated these rules more than three times shall be denied the access to the state library for a period of ~~[thirty (30)]~~ sixty (60) days by the ~~[Head of Information Services]~~ state librarian or designated staff person. Any patron who is denied access to the ~~[Talking Book Library]~~ library for the blind and physically handicapped of the state library may request the decision be reviewed or reconsidered by the state librarian.

[4.5.7.11 NMAC - Rn, 4.5.7.10 NMAC & A, 04-01-06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 4 E M E R G E N C Y LICENSURE PROVISIONS

16.5.4.1 ISSUING AGENCY: New Mexico Board of Dental Health Care. [16.5.4.1 NMAC - N, 04/17/06]

16.5.4.2 SCOPE: The provisions of 16.5.4 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who qualifies to obtain a license under the provisions for emergency licensure in New Mexico. [16.5.4.2 NMAC - N, 04/17/06]

16.5.4.3 STATUTORY AUTHORITY: NMSA 1978 Section 61-

5A-1 through Section 61-5A-30 (1996 Repl. Pam.).

[16.5.4.3 NMAC - N, 04/17/06]

16.5.4.4 DURATION: Permanent.

[16.5.4.4 NMAC - N, 04/17/06]

16.5.4.5 EFFECTIVE DATE: 04/17/06, unless a later date is cited at the end of a section.

[16.5.4.5 NMAC - N, 04/17/06]

16.5.4.6 OBJECTIVE: To establish rules to govern the emergency licensure for dentists, dental hygienists, dental assistants affected by a declared disaster.

[16.5.4.6 NMAC - N, 04/17/06]

16.5.4.7 DEFINITIONS: [RESERVED]

16.5.4.8 REQUIREMENTS FOR EMERGENCY LICENSURE:

A. Dentists, dental hygienists and dental assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four (4) months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) licensing qualifications and documentation requirements 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC for dentists, 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC for dental hygienists and 16.5.33 NMAC for dental assistants.

(3) other required information and/or documentation will be the name and address of employer, copy of diploma, copy of current license in another state, or verification of licensure, copy of DEA license if applicable; a license will not be granted without a practice location; the board will query the national practitioners databank, American association of dental examiners and other state dental boards where the practitioner has ever held a license; if any or all of this information and/or documents are not available or destroyed in a disaster, an affidavit certifying this will be required.

B. The board may waive the following requirements for licensure:

(1) application fee;
(2) background check by professional background information services;

and

(3) transcripts from an ADA accredited program.

C. The board may waive the specific forms required under the requirements for licensure if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Nothing in this section shall constitute a waiver of the requirements for licensure for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; and dental assistants as required in 16.5.33 NMAC.

E. Licenses issued under the emergency provision shall expire four (4) months, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made thirty (30) days prior to the date of expiration and may be renewed no more than once. The applicant must obtain a permanent or temporary license within eight (8) months of the issuance of the initial emergency license. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. The board will renew an emergency license for a period of four (4) months for the following renewal fees:

(1) dentists \$100.00 emergency license renewal fee;
(2) dental hygienists 50.00 emergency license renewal fee;
(3) dental assistants 10.00 emergency license renewal fee.

F. Licensees issued a license under the emergency provision are subject to all provisions of the Dental Health Care Act, Article 5A and the rules and regulations, Title 16 Chapter 5, specifically the disciplinary proceedings NMSA 1978 Section 61-5A-21.

[16.5.4.9 NMAC - N, 04/17/06]

16.5.4.9 E M E R G E N C Y LICENSE TERMINATION:

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent or temporary license for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; or dental assistants as required in 16.5.33 NMAC; or

(2) proof that the emergency license holder has engaged in fraud deceit; misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.
[16.5.4.9 NMAC - N, 04/17/06]

**HISTORY OF 16.5.4 NMAC:
[RESERVED]**

**NEW MEXICO BOARD OF
DENTAL HEALTH CARE**

This is an amendment to 16.5.5 NMAC Sections 5 and 8, effective 04-17-06.

16.5.5.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or Paragraph]~~.
[9-30-96; 16.5.5.5 NMAC - Rn, 16 NMAC 5.5.5, 06-14-01; A, 04-17-06]

16.5.5.8 FEES:
A. All fees are non-refundable.

B. Application for licensure by examination fee is \$500, which includes the initial licensing period.

C. Application for licensure by credential fee is \$750, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.

E. Triennial renewal fee for all dental licenses is \$450.

(1) Impaired fee is \$30 per triennial renewal period plus renewal fee.

(2) Late renewal fee of \$100 after July 1 through September 1 plus renewal and impaired fees.

(3) Cumulative late fee of \$10 per day from August 1 to the date of the post-mark or hand-delivery to the board office plus renewal and impaired fees.

F. Triennial renewal fee for inactive license is \$90.

G. Temporary license fees:
(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$200;

(3) twelve month license, application fee of \$100, license fee of \$300.

H. Anesthesia permit fees:
(1) Nitrous oxide permit fee is \$25;

(2) Conscious sedation I permit fee is \$25;

(3) Conscious sedation II permit fee is \$300;

(4) Deep sedation and general anesthesia permit fee is \$300.

~~[F. Late fee for renewal applications received but not complete, or not received or postmarked by June 30 is \$100.]~~

~~[F.]~~ Reinstatement fee is \$400.

~~[K.]~~ Application for licensure for inactive status is \$50.

~~[L.]~~ Administrative and duplication fees:

(1) duplicate license fee is \$25;

(2) multiple copies of the statute or rules are \$10 each;

(3) copy fees are \$0.50 per page, with a minimum charge of \$5.00;

(5) list of current dental licensees is \$250; an annual list of current licensees is available to the professional association upon request at no cost; and

(6) mailing labels of current dental licensees is \$300.

~~[M. Impaired fee: In addition to the license renewal fee, each dentist subject to renewal will be assessed an amount not to exceed \$40 per triennial renewal period.]~~

[10-21-70, 3-14-73, 4-11-81, 3-7-88, 4-12-92, 3-16-94, 5-31-95, 9-30-96, 12-15-97, 5-28-99, 8-16-99; 16.5.5.8 NMAC - Rn & A, 16 NMAC 5.5.8, 06-14-01; A, 5-31-02, A, 03-06-05; A, 04-17-06]

**NEW MEXICO BOARD OF
DENTAL HEALTH CARE**

This is an amendment to 16.5.6 NMAC Section 5 and 11, effective 04-17-06.

16.5.6.5 EFFECTIVE DATE: June 14, 2001, unless a ~~[different]~~ later date is cited at the end of a section ~~[or Paragraph]~~.

[9-30-96; 16.5.6.5 NMAC - Rn, 16 NMAC 5.6.5, 06-14-01; A, 04-17-06]

16.5.6.11 RE-EXAMINATION PROCEDURE: An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as ~~[defined in Section 8.4 of Part 5]~~ set forth in Subsection D of 16.5.5.8 NMAC to re-take the exam.

[9-13-69, 9-30-96; 16.5.6.11 NMAC - Rn, 16 NMAC 5.6.11, 06-14-01; A, 04-17-06]

**NEW MEXICO BOARD OF
DENTAL HEALTH CARE**

This is an amendment to 16.5.12 NMAC Sections 5, 9, 10, and 11, effective 04-17-06.

16.5.12.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or Paragraph]~~.

[9-30-96; 16.5.12.5 NMAC - Rn, 16 NMAC 5.12.5, 12-14-00; A, 04-17-06]

16.5.12.9 INACTIVE: A license

to practice dentistry may be placed in inactive status one time through the following procedures.

A. The request for inactive status must be made by an application obtained from the board office prior to the expiration of the current license or the three-year eligibility of retirement status. Dentists with an active practice located in New Mexico must include the following information:

(1) the actual date of inactivation request;

(2) proof of written notification of approaching inactive status to all patients currently under active treatment;

(3) the location where all active dental treatment records will be maintained for a minimum of two years; active treatment records are records of patients treated in the two years previous to the date of inactive status; the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

B. All dentists requesting inactive status ~~[may]~~ shall include a list of any continuing education courses taken since the last license renewal, including documentation ~~[required]~~ as set forth in 16.5.10 NMAC ~~[inactive status and at the next meeting of the board the request for inactivation will be placed on the agenda].~~

C. The board may deny a request for inactive status if there are any current or pending complaints or disciplinary actions against the licensee.

[3-14-73...5-31-95, 12-15-97; 16.5.12.9 NMAC - Rn & A, 16 NMAC 5.12.9, 12-14-00; N, 03-06-05; A, 04-17-06]

16.5.12.10 REINSTATEMENT FROM RETIREMENT STATUS: A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in section 16.5.12.8 NMAC of this part. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) twenty hours of approved continuing education courses related to the clinical practice of dentistry, per year of retirement; at least twenty of these hours must be in the twelve months previous to the request;

(2) proof of current CPR certification;

(3) proof of infection control

course within the past twelve months; and

(4) sixty hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA), and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of retirement and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from retirement status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in retirement status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a retired license is not requested after three years of retirement, and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.12.10 NMAC - Rn, 16.5.12.9 NMAC & A, 03-06-05; A, 04-17-06]

16.5.12.11 REINSTATEMENT FROM INACTIVE STATUS:

A licensee whose license has been placed in inactive status may request reinstatement to active license status within nine years of the date of inactivation as indicated in Section 16.5.12.8 NMAC of this part. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement

must include the reinstatement fee, the triennial renewal fee, impairment fee and proof of the following continuing education courses:

(1) twenty hours of approved continuing education courses related to the clinical practice of dentistry, per year of inactivation; at least twenty of these hours must be in the twelve months previous to the request;

(2) proof of current CPR certification;

(3) proof of infection control course within the past twelve months;

(4) proof of medical emergency course during the past twelve months; and

(5) sixty hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA); and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of inactivation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from inactive status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in inactive status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of an inactive license is not requested after nine years of inactivation [~~and if the licensee does not apply for retirement status~~], application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico or six years if

the licensee signs affidavit foregoing three years for retirement as defined in Subsection E of 16.5.12.8 NMAC.

[16.5.12.11 NMAC - N, 03-06-05; A, 04-17-06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.18 NMAC Section 8, effective 04-17-06.

16.5.18.8 FEES:

A. All fees are non-refundable.

B. Application fee for licensure by examination is \$250, which includes the initial licensing period.

C. Application fee for licensure by credentials is \$300, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

E. Triennial renewal fee[s] for all dental hygienist licensee is \$225.

(1) ~~Triennial renewal fee is \$225.~~ Impaired fee is \$15 per triennial renewal period plus renewal fee.

(2) ~~Triennial renewal fee for inactive license is \$50.00.~~ Late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees.

(3) ~~Late fee for renewal applications received but not complete, or not received or post marked by June 30 is \$100.~~ Cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal and impaired fees.

(4) ~~Impaired fee: In addition to the license renewal fee, each dental hygienist subject to renewal may be assessed a fee not to exceed \$30 per triennial renewal period.~~

F. Fees for collaborative practice.

(1) Application for certification for collaborative practice fee is \$150.

(2) Renewal of certification for collaborative practice fee is \$50 at the time of each triennial license renewal. The initial fee will be prorated at \$20 per full year of certification.

G. Fees for temporary licenses and application:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$100;

(3) twelve month license, application fee of \$100, license fee of \$150.

H. Application for certification in local anesthesia fee.

(1) By examination - \$40.

(2) By credentials - \$100 for application and credential review.

I. Reinstatement fee is \$200.

J. Application for licensure for inactive status is \$50.00.

K. Administrative fees:

(1) duplicate license fee is \$25;

(2) multiple copies of the statute or rules are \$10 each;

(3) copies cost \$0.50 per page, with a minimum charge of \$5.00;

(4) list of current dental hygiene licensees is \$180; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) mailing labels of current dental hygiene licensees is \$230.

[3-14-73, 4-11-81, 3-7-88, 3-28-91, 5-31-95, 12-15-97, 8-16-99; 16.5.18.8 NMAC - Rn & A, 16 NMAC 5.18.8, 06-14-01; A, 9-30-02; A, 12-30-02; A, 03-06-05; A, 04-17-06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.20 NMAC Section 5, effective 04-17-06.

16.5.20.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or Paragraph]~~.

[9-30-96; 16.5.20.5 NMAC - Rn, 16 NMAC 5.20.5, 06-14-01; A, 04-17-06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.25 NMAC Sections 9, and 11, effective 04-17-06.

16.5.25.9 INACTIVE: A license to practice dental hygiene may be placed in inactive status one time through the following procedures.

A. The request for inactive status must be made by an application obtained from the board office prior to the expiration of the current license or the three-year eligibility of retirement status. The written request must include the following information:

(1) the actual date of inactivation request; and

(2) a list of any continuing education courses taken since the last license renewal, including documentation ~~[required in Section]~~ as set forth in 16.5.1.15 NMAC.

B. Board staff shall acknowledge receipt of application for inactive status and at the next meeting of the committee the request for inactivation will

be placed on the agenda.

C. The committee may recommend denial of a request for inactive status if there are any current or pending complaints or disciplinary actions against the licensee.

[3-14-73, 3-11-89, 5-31-95, 9-30-96, 1-1-99; 16.5.25.9 NMAC - Rn & A, 16 NMAC 5.25.9, 12-14-00; A, 12-30-02; N, 03-06-05; A, 04-17-06]

16.5.25.11 REINSTATEMENT FROM INACTIVE STATUS: A licensee whose license has been placed in inactive status may request reinstatement of the inactive license to active license status within nine years of the date of inactive status as indicated in Section 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) there will be 10 CE hours for each year of inactive status required for reinstatement; the hours may be accumulated at any time during the year(s) of inactivation; the requirements of the infection control hours and the CPR hours, and medical emergency course taken in the past twelve months may be included toward these required hours;

(2) proof of infection control course within the past twelve months; and

(3) proof of current CPR certification;

(4) proof of medical emergency course during the past twelve months;

(5) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period; and

(6) verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification must be sent directly to the board office from the other states boards, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. The request for reinstatement from inactive status, including a statement of the applicant's activities during the period of inactivation and any existing impairment, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submit-

ted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in inactive status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of an inactive license is not requested within [9] nine years of ~~[inactive status]~~ inactivation, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico or the license must be permanently retired.

[16.5.25.11 NMAC - N, 03-06-05; A, 04-17-06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.2 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.2.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~].

[9/30/96; 16.5.2.1 NMAC - Rn & A, 16 NMAC 5.2.1, 04/17/06]

16.5.2.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or paragraph]~~.

[9/30/96; 16.5.2.5 NMAC - Rn & A, 16 NMAC 5.2.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.3 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.3.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~].

[9/30/96; 16.5.3.1 NMAC - Rn & A, 16 NMAC 5.3.1, 04/17/06]

16.5.3.5 EFFECTIVE DATE:

September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or paragraph]~~.
[9/30/96; 16.5.3.5 NMAC - Rn & A, 16 NMAC 5.3.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.10 NMAC Sections 1, 5, 9, and 10, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.10.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~].
[9/30/96; 16.5.10.1 NMAC - Rn & A, 16 NMAC 5.10.1, 04/17/06]

16.5.10.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or paragraph]~~.
[9/30/96; 16.5.10.5 NMAC - Rn & A, 16 NMAC 5.10.5, 04/17/06]

16.5.10.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dentistry and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal.

A. CPR. Proof of current certification in basic life support accepted by the American heart association or the American red cross. ~~[It is strongly recommended CPR be taken annually. Dentists who administer any analgesia or anesthesia shall have current basic life support certification.]~~

B. Infection control. As further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.
[5/21/93...9/30/96; 16.5.10.9 NMAC - Rn & A, 16 NMAC 5.10.9, 04/17/06]

16.5.10.10 VERIFICATION OF CONTINUING EDUCATION: The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following

the renewal cycle in which they are earned.
[5/21/93...9/30/96; 16.5.10.10 NMAC - Rn & A, 16 NMAC 5.10.10, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.11 NMAC Sections 1, 5, 9, 10, 11, 12 and 13, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.11.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~].
[9/30/96; 16.5.11.1 NMAC - Rn & A, 16 NMAC 5.11.1, 04/17/06]

16.5.11.5 EFFECTIVE DATE: September 30, 1996, unless a different date is cited at the end of a section ~~[or paragraph]~~.
[9/30/96; 16.5.11.5 NMAC - Rn & A, 16 NMAC 5.11.5, 04/17/06]

16.5.11.9 RENEWAL PERIOD AND EXPIRATION: After the initial license period, dental licenses expire every three years on ~~[July 1]~~ June 30. Dental licenses not renewed by July 1, are considered expired.
[9/13/69...9/30/96; 8/16/99; 16.5.11.9 NMAC - Rn & A, 16 NMAC 5.11.9, 04/17/06]

16.5.11.10 RENEWAL PROCESS: A completed renewal application, accompanied by the required fees ~~[and documentation]~~ as set forth in 16.5.5.8 NMAC, along with the required proof of completion of 60 hours of continuing education as [defined] set forth in [Section 15 of Part 1] 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1, of the renewal year.
[3/14/73...9/30/96; 8/16/99; 16.5.11.10 NMAC - Rn & A, 16 NMAC 5.11.10, 04/17/06]

16.5.11.11 LICENSE RESPONSIBILITY: The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion, and may result in the assessment of a late renewal fee as set forth in 16.5.5.8 NMAC.
[6/4/95; 16.5.11.11 NMAC - Rn & A, 16 NMAC 5.11.11, 04/17/06]

16.5.11.12 RENEWAL AFTER [JULY 1] JUNE 30: Renewal applications post-marked after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application ~~[, the triennial renewal fee of \$300, late fee of \$100, impairment fee, and documentation of 60 hours of continuing education]~~ with the required proof of completion of 60 hours of continuing education as set forth in 16.5.10.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.5.8 NMAC.
[3/14/73...9/30/96; 8/16/99; 16.5.11.12 NMAC - Rn & A, 16 NMAC 5.11.12, 04/17/06]

16.5.11.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1: Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application ~~[, the triennial renewal fee of \$300, a late fee of \$100, impairment fee, a cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand delivery to board office, and documentation of 60 hours of continuing education.]~~ with the required proof of completion of 60 hours of continuing education as set forth in 16.5.10.8 NMAC, along with the triennial renewal fee, impairment fee, late fee and the cumulative late fee as set forth in 16.5.5.8 NMAC.
[3/14/73...5/31/95; 16.5.11.13 NMAC - Rn & A, 16 NMAC 5.11.13, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.13 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.13.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~].
[9/30/96; 16.5.13.1 NMAC - Rn & A, 16 NMAC 5.13.1, 04/17/06]

16.5.13.5 EFFECTIVE DATE: September 30, 1996, unless a different date is cited at the end of a section ~~[or paragraph]~~.
[9/30/96; 16.5.13.5 NMAC - Rn & A, 16 NMAC 5.13.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.23 NMAC Sections 1, 5, and 9, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.23.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.23.1 NMAC - Rn & A, 16 NMAC 5.23.1, 04/17/06]

16.5.23.5 EFFECTIVE DATE: September 30, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.23.5 NMAC - Rn & A, 16 NMAC 5.23.5, 04/17/06]

16.5.23.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dental hygiene and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal:

A. CPR: proof of current certification in basic life support accepted by the American heart association or the American red cross; [~~It is strongly recommended CPR be taken annually. Dental hygienists who administer local anesthesia, prescribed administration of nitrous oxide, or who monitor the use of any analgesia or anesthesia shall have current basic life support certification.~~]

B. infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period. [11/21/75, 4/12/92, 5/21/93, 5/31/95, 9/30/96; 16.5.23.9 NMAC - Rn & A, 16 NMAC 5.23.9, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.24 NMAC Sections 1, 5, 9, 10, 11, 12 and 13, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.24.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.24.1 NMAC - Rn & A, 16 NMAC 5.24.1, 04/17/06]

16.5.24.5 EFFECTIVE DATE:

September 30, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.24.5 NMAC - Rn & A, 16 NMAC 5.24.5, 04/17/06]

16.5.24.9 RENEWAL PERIOD AND EXPIRATION: After the initial license period, dental hygiene licenses expire every three years on [~~July 1~~] June 30. Dental hygiene licenses not renewed by July 1 are considered expired. [3/14/73, 9/30/96, 8/16/99; 16.5.24.9 NMAC - Rn & A, 16 NMAC 5.24.9, 04/17/06]

16.5.24.10 RENEWAL PROCESS: A completed renewal application, accompanied by the required fee [~~and documentation~~] as set forth in 16.5.18.8 NMAC, along with the required proof of completion of 45 hours of continuing education as [~~defined~~] set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1, of the renewal year. [3/14/73, 9/30/96, 8/16/99; 16.5.24.10 NMAC - Rn & A, 16 NMAC 5.24.10, 04/17/06]

16.5.24.11 LICENSEE RESPONSIBILITY: The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion and may result in the assessment of a late renewal fee as set forth in 16.5.18.8 NMAC. [5/31/95; 16.5.24.11 NMAC - Rn & A, 16 NMAC 5.24.11, 04/17/06]

16.5.24.12 RENEWAL AFTER [JULY 1] JUNE 30: Renewal applications post-marked after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application [~~the triennial renewal fee of \$150, late fee of \$100, impairment fee, and documentation of 45 hours of continuing education.~~] with the required proof of completion of 45 hours of continuing education as set forth in 16.5.23.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.18.8 NMAC. [3/14/73, 9/30/96, 8/16/99; 16.5.24.12 NMAC - Rn & A, 16 NMAC 5.24.12, 04/17/06]

16.5.24.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1: Renewal applications post-marked on or after August 1, but before September

1, of the renewal year, must be accompanied by the completed renewal application [~~the triennial renewal fee of \$150, impairment fee, a late fee of \$100, a cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand delivery to board office, and documentation of 45 hours of continuing education.~~] with the required proof of completion of 45 hours of continuing education as set forth in 16.5.23.8 NMAC, along with the triennial renewal fee, impairment fee, late fee and the cumulative late fee as set forth in 16.5.18.8 NMAC. [3/14/73, 5/31/95; 16.5.24.13 NMAC - Rn & A, 16 NMAC 5.24.13, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.26 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.26.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.26.1 NMAC - Rn & A, 16 NMAC 5.26.1, 04/17/06]

16.5.26.5 EFFECTIVE DATE: September 30, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.26.5 NMAC - Rn & A, 16 NMAC 5.26.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.28 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.28.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.28.1 NMAC - Rn & A, 16 NMAC 5.28.1, 04/17/06]

16.5.28.5 EFFECTIVE DATE: September 30, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.28.5 NMAC - Rn & A, 16 NMAC 5.28.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.29 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.29.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.29.1 NMAC - Rn & A, 16 NMAC 5.29.1, 04/17/06]

16.5.29.5 EFFECTIVE DATE: September 30, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.29.5 NMAC - Rn & A, 16 NMAC 5.29.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.32 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.32.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.32.1 NMAC - Rn & A, 16 NMAC 5.32.1, 04/17/06]

16.5.32.5 EFFECTIVE DATE: September 30, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.32.5 NMAC - Rn & A, 16 NMAC 5.32.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.35 NMAC Sections 1, 5, 9, 10, 12, and 13, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.35.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.35.1 NMAC - Rn & A, 16 NMAC 5.35.1, 04/17/06]

16.5.35.5 EFFECTIVE DATE: September 30, 1996, unless a [~~different~~]

later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.35.5 NMAC - Rn & A, 16 NMAC 5.35.5, 04/17/06]

16.5.35.9 RENEWAL PERIOD AND EXPIRATION: After the initial license period, certifications for expanded function expire every three years on [~~July 1~~] June 30. Certificates that are not renewed by [~~June 30~~] July 1 are considered expired. [9/7/84...9/30/96, 8/16/99; 16.5.35.9 NMAC - Rn & A, 16 NMAC 5.35.9, 04/17/06]

16.5.35.10 RENEWAL PROCESS: A completed renewal application, accompanied by the required fee [~~and record~~] as set forth in 16.5.32.8 NMAC, along with the required proof of completion of 30 hours of continuing education as [defined] set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1 of the renewal year. [5/31/95, 9/30/96, 8/16/99, 2/14/00; 16.5.35.10 NMAC - Rn & A, 16 NMAC 5.35.10, 04/17/06]

16.5.35.12 RENEWAL AFTER JUNE 30: Renewal applications post-marked after July 1 and prior to August 1 of the renewal year must be accompanied by the completed renewal application [~~the triennial renewal fee, late fee, and documentation of 30 hours of continuing education.~~] with the required proof of completion of 30 hours of continuing education as set forth in 16.5.36.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.32.8 NMAC. [5/31/95, 9/30/96, 8/16/99; 16.5.35.12 NMAC - Rn & A, 16 NMAC 5.35.12, 04/17/06]

16.5.35.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1: Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application [~~the triennial renewal fee, a late fee, a reinstatement fee, and documentation of 30 hours of continuing education.~~] with the required proof of completion of 30 hours of continuing education as set forth in 16.5.36.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.32.8 NMAC. [5/31/95, 9/30/96, 8/16/99; 16.5.35.13 NMAC - Rn & A, 16 NMAC 5.35.13, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment of 16.5.36 NMAC Sections 1, 5 and 9, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.36.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.36.1 NMAC - Rn & A, 16 NMAC 5.36.1, 04/17/06]

16.5.36.5 EFFECTIVE DATE: September 30, 1996, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~]. [9/30/96; 16.5.36.5 NMAC - Rn & A, 16 NMAC 5.36.5, 04/17/06]

16.5.36.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dental assisting. The following courses are required for license renewal:

A. Three hours of radiographic technique or safety and protection;
B. As further defined in Section 16 of Part 1 [now 16.5.1.16 NMAC], a course in infection control techniques and sterilization procedures per renewal period; and

C. CPR. Proof of current certification in basic life support accepted by the American heart association or the American red cross. [~~It is strongly recommended CPR be taken annually.~~] Dental assistants who provide prescribed administration of nitrous oxide, or who monitor the use of any analgesia or anesthesia shall have current basic life support certification.

[8/11/89, 5/21/93, 5/31/95, 9/30/96; 16.5.36.9 NMAC - Rn & A, 16 NMAC 5.36.9, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.37 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.5.37.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~]. [9/30/96; 16.5.37.1 NMAC - Rn & A, 16 NMAC 5.37.1, 04/17/06]

16.5.37.5 EFFECTIVE DATE:

September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or paragraph]~~.
[9/30/96; 16.5.37.5 NMAC - Rn & A, 16 NMAC 5.37.5, 04/17/06]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.40 NMAC Sections 1 and 5, effective 04/17/06. This rule was also renumbered and reformatted to comply with current NMAC requirements

16.5.40.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [~~725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165~~].
[9/30/96; 16.5.40.1 NMAC - Rn & A, 16 NMAC 5.40.1, 04/17/06]

16.5.40.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or paragraph]~~.
[9/30/96; 16.5.40.5 NMAC - Rn & A, 16 NMAC 5.40.5, 04/17/06]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

This is an amendment of 3.13.19 NMAC, Sections 3, 6, 7, 8, 9, 10, 11, 12, and 13 and the adoption of 3.13.19 NMAC, Sections 14 and 15, effective 03-31-06.

3.13.19.3 STATUTORY AUTHORITY: These rules are established under the authority of NMSA 1978, Sections 7-2A-19 ~~[(2002)]~~ and 9-1-5E.
[3.13.19.3 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.6 OBJECTIVE: ~~[The]~~ This part's objective ~~[of this part]~~ is to establish procedures for administering the renewable energy production tax credit.
[3.13.19.6 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.7 DEFINITIONS:
A. "Applicant" means a ~~[corporate]~~ business entity that ~~[is planning to develop a qualified energy generator]~~ holds title to a qualifying energy generator or leases property upon which a qualified energy generator operates from a county or municipality pursuant to an industrial revenue bond, or plans to develop a qualified energy generator and will hold title to the qualified energy generator or lease property

upon which the qualified energy generator operates from a county or municipality pursuant to an industrial revenue bond at the time the division certifies that the facility is a qualified energy generator, and that ~~[desires]~~ applies to receive the renewable energy production tax credit pursuant to this part for itself or on other taxpayers' behalf.

B. "Biomass" means agricultural or animal waste; thinnings from trees less than ~~[fifteen]~~ 15 inches in diameter; slash and brush; ~~[lumbermill]~~ lumber mill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

~~[C.]~~ "Certified Taxpayer" means the owner of a qualified energy generator who is certified pursuant to this part to be eligible to receive the renewable energy production tax credit.]

~~[D.]~~ C. "Confidential information" means information included in the renewable energy production tax credit application package or ~~[required to be submitted]~~ that the department requires the applicant to submit as part of the approval process that the applicant requests in writing to be held confidential.

~~[E.]~~ D. "Department" means the energy, minerals and natural resources department.

~~[F.]~~ E. "Director" means the director or head of the department's energy conservation and management division ~~[of the department]~~.

~~[G.]~~ E. "Division" means the department's energy conservation and management division ~~[of the department]~~.

G. "Five percent ownership" means New Mexico corporate income taxpayers that individually or collectively, directly or indirectly, own at least five percent of a qualified energy generator or of the total capitalized cost to construct a qualified energy generator; and are entitled to receive at least five percent of cash distributed to owners of the qualified energy generator over its useful life.

H. "Generating capacity" means ~~[the]~~ a qualified energy generator's nominal rated electrical power output (nameplate capacity) in megawatts ~~[of a qualified energy generator]~~ during optimum resource conditions, as ~~[specified by]~~ the generator's manufacturer specifies. Generating capacity shall be at least 10 megawatts. If the prevailing resource conditions at a project site are insufficient for a ~~[facility]~~ qualified energy generator to attain full nameplate capacity output at the time ~~[of]~~ the division issues the certification, the power output shall be that which corresponds to at least 10 megawatts nominal rating according to the equipment manufacturer's published performance ratings for those prevailing conditions.

I. "Interconnection agree-

ment" means an agreement allowing the applicant to interconnect the qualified energy generator, of a specified type and size, to a suitable electric transmission or distribution line.

J. "Land rights agreement" means an agreement providing ~~[to]~~ the applicant ~~[the]~~ with control of land and the rights necessary to construct and operate a qualified energy generator.

~~[K.]~~ "Owner" means a taxpayer that owns at least five percent of the qualified energy generator. The owner may be a different entity than the applicant.]

K. "Notice of allocation" means a form the division prescribes that an applicant completes indicating the allocation of its or another entity's right to claim the tax credit to one or more taxpayers and each taxpayer's interest in the qualified energy generator.

L. "Power purchase agreement" means an agreement that binds an applicant to provide power at a specified price and a buyer to purchase power from the qualified energy generator.

M. "Project finance agreement" means an agreement that binds a capable entity to provide the financing necessary for ~~[construction of]~~ a qualified energy ~~[generator]~~ generator's construction.

N. "Qualified energy generator" means a facility with at least 10 megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells electricity to an unrelated person.

O. "Qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources: solar light, solar heat, wind, or biomass.

~~[P.]~~ "Related Person" means a partner, joint venture participant, shareholder, subsidiary, affiliate or parent company.]

~~[Q.]~~ P. "Renewable energy production tax credit application package" or "application package" means the application documents submitted by an applicant to the division for certification to receive the renewable energy production tax credit.

~~[R.]~~ Q. "Secretary" means the head of the department.

R. "Tax credit" means the renewable energy production tax credit.

S. "Unrelated person" means a person who is not a ~~[related person, including a customer to whom a utility sells electricity]~~ partner or joint venture participant who owns more than 50 percent of the profit interest or capital interest in the partnership or joint venture; shareholder who

owns more than 50 percent of the shares, subsidiary, or parent company; or a trade or business that is under common control. If a corporation is a member of an affiliated group of corporations filing a consolidated tax return, the division will treat the corporation as selling electricity to an unrelated person if another member of the affiliated group sells the electricity to the person.

[3.13.19.7 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.8 GENERAL PROVISIONS:

A. Only ~~[a qualified energy generator located within New Mexico is]~~ those taxpayers that meet the requirements of 3.13.19.14 NMAC are eligible for a ~~[renewable energy production]~~ tax credit.

B. ~~[The]~~ A proposed project shall meet these required milestones. If a project fails to meet a milestone, the division shall reject the application.

(1) Applicant submits a complete renewable energy production tax credit application package to the division.

(2) Construction of a qualified energy generator shall commence within 12 months ~~[of the application]~~ of the application's approval. The applicant shall meet this requirement ~~[shall be met]~~ by entering into a construction contract and by the placement of a permanent, physical part of the facility, such as a poured concrete foundation. Applicant shall submit to the division a copy of the contract accompanied by a letter certifying that such construction has occurred.

(3) A qualified energy generator shall generate electrical power and achieve commercial operation, demonstrating at least 10 megawatts generating capacity, within 24 months of the division's approval of the application.

(4) Within 24 months of the application's approval ~~[of the application]~~, the ~~[owner]~~ applicant shall submit to the division:

(a) the name of the qualified energy generator;

(b) electric output meter readings documenting commercial operation and indicating at least 10 megawatts output;

(c) a copy of the bill of sale or other documentation sufficient to evidence a sale of the power indicating the amount of electrical energy produced, precise time period of production, and the name of the buyer of the electricity; and

(d) records to verify that the ~~[owner]~~ applicant is selling to unrelated persons; ~~and~~

~~(e) evidence of ownership (whole or partial) of the facility].~~

C. NMSA 1978, Section 7-2A-19 limits the power production of a

qualified energy generator eligible for a tax credit to 400,000 megawatt-hours per year. It also limits the eligible power production of all qualified energy generators to 2,000,000 megawatt-hours per year. When the 2,000,000 megawatt-hours limit is reached based on the total of applications approved, the division will no longer approve applications, but will accept them for future consideration in the event that approved facilities are not completed on schedule and tax credit becomes available. The division shall keep a record of the order of receipt of all applications.

[3.13.19.8 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.9 APPLICATION:

A. A renewable energy production tax credit application form can be obtained from the division.

B. An applicant shall submit an application package to the division. ~~[The division will accept applications beginning March 15, 2003.]~~

C. The application package shall consist of a completed renewable energy production tax credit application form, with the following required attachments:

(1) a copy of the land rights agreement;

(2) a copy of the interconnection agreement or a system impact study agreement between the applicant and the interconnect utility, or its functional equivalent; and

(3) a copy of the power purchase agreement, project finance agreement, or evidence of self-financing.

D. The division shall return an incomplete application to the applicant.

[3.13.19.9 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.10 APPLICATION REVIEW PROCESS:

A. ~~[Applications shall be considered]~~ The division shall consider applications in the order received, according to the day ~~[they are received]~~ it receives them, but not the time of day. ~~[Applications received]~~ The division shall give applications it receives on the same day ~~[will receive]~~ equal consideration. If the division approves applications it received on the same day ~~[are approved]~~ and they would exceed the overall limit of tax credit availability, then the division shall divide the available credit ~~[will be divided]~~ among those applications on a prorated, per megawatt-hour basis.

B. The division shall approve or reject an application within 30 days following its receipt of the application

package, or if the division requires more time ~~[is required the division]~~ it shall notify the applicant of the reason and shall approve or reject the application as soon as possible.

C. The division shall review the application package to determine if the proposed generator will be a qualified energy generator and if the requisite documentation specified in Subsection C of 3.13.19.9 NMAC, above, is valid.

D. The division shall check the accuracy of the applicant's ~~[estimate of]~~ estimated annual production potential and make any necessary adjustments to ensure the ~~[estimate]~~ potential is reasonably achievable ~~[in an average year]~~. The limit of the qualified energy generator's energy production eligible for the tax credit for the taxable year shall be the lesser of: the estimate ~~[approved by the division]~~ the division approves, or 400,000 megawatt-hours, or the eligible electricity remaining of the 2,000,000 megawatt-hours total for the state.

E. If the division finds that the application package meets the required criteria and ~~[production]~~ tax credit is available, the division shall approve the application. The ~~[division's approval is given by the issuance of]~~ division shall approve the application by issuing a letter to the applicant ~~[This letter]~~, which shall include the limit of the qualified energy generator's annual production eligible for the tax credit.

F. The division shall reject an application that is not complete or correct, does not meet the criteria for approval or fails to meet a required milestone. The division's rejection letter shall state the reasons why it rejected the application ~~[was rejected]~~. The applicant may resubmit the application package for the rejected project. The division shall place the resubmitted application in the review schedule as if it were a new project.

[3.13.19.10 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.11 CONFIDENTIALITY REQUESTS, WAIVERS, REVIEWS AND APPEALS:

A. An applicant may request in writing that the department hold ~~[confidential]~~ materials submitted as part of the application package and certification process confidential pursuant to NMSA 1978, Section 71-2-8. The applicant shall address the request ~~[shall be addressed]~~ to the director.

B. An applicant may request in writing ~~[a waiver of]~~ that the director waive any provision of the application unless ~~[the provision is required by]~~ NMSA 1978, Section 7-2A-19 ~~[(2002)]~~ requires the provision. The applicant shall

address the request ~~[shall be addressed]~~ to the director ~~[. The applicant shall]~~, and include ~~[in the request for waiver]~~ the facts and circumstances ~~[to]~~ that support a waiver.

C. The applicant shall have the right to request in writing review of the ~~director's~~ decision to reject an application or review of the ~~[estimate of]~~ ~~division's~~ adjustments to the annual production estimate. The applicant shall address the request ~~[shall be addressed]~~ to the director and include the reasons that ~~the director should review~~ the decision ~~[should be reviewed]~~.

D. Any person having an interest that ~~[is or may be adversely affected has the right to]~~ the request does or may adversely affect may oppose ~~[the]~~ an applicant's request to hold ~~[confidential]~~ materials ~~an applicant has~~ submitted as part of an application package ~~confidential~~ or the ~~[granting of a waiver of]~~ ~~director grant~~ an applicant's request to waive a provision of the application. The person shall submit the opposition ~~[shall be]~~ in writing, within ~~[ten]~~ 10 days of the request, ~~[addressed]~~ to the director ~~[with]~~ and send a copy ~~[sent]~~ to the applicant. ~~[and]~~ The opposition shall include the reasons that ~~the department should not hold~~ the information ~~[should not be held]~~ confidential or that ~~[a waiver should not be granted]~~ the director should not grant the waiver.

(1) The director shall consider the request and the opposition, if any. The director may hold a hearing and appoint a hearing officer to conduct the hearing. The director shall send a final decision to the applicant and any person or entity opposing the request within 20 days ~~[of receipt of]~~ after receiving the request, the opposition, if the request is opposed, or the date the hearing is held.

(2) The applicant or the person or entity opposing the request may appeal in writing ~~[an adverse]~~ to the secretary a director's decision ~~[from the director to the secretary]~~. The notice of appeal shall include the reasons that ~~the secretary should overturn~~ the director's decision ~~[should be overturned]~~.

E. The secretary shall consider any appeal from a director's decision ~~[of the director]~~. The applicant must file the appeal and the reasons for it ~~[must be filed]~~ with the secretary within ~~[ten]~~ 10 working days of the director's issuance of ~~[the director's]~~ his decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the appellant within 20 days ~~[of receipt of]~~ after receiving the request or the date the hearing concludes. [3.13.19.11 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.12 CERTIFICATION:

A. When a qualified energy generator, for which the division has approved a ~~[renewable energy production]~~ tax credit application package, produces power and it is sold to an unrelated person, then the ~~[owner is eligible to receive]~~ applicant may request certification from the division. If the ~~[owner of the generator]~~ applicant is different from the original applicant then ~~the new applicant shall submit~~ a revised application form ~~[shall be submitted]~~ to the division indicating ~~[the name of the owner]~~ who is eligible for the tax credit. The qualified energy generator must demonstrate at least 10 megawatts generating capacity. The ~~[owner]~~ applicant shall submit:

- (1) the name of the qualified energy generator;
- (2) electric power output meter readings indicating at least 10 megawatts generating capacity;
- (3) a copy of the bill of sale or equivalent documentation indicating the amount of electrical energy ~~the qualified energy generator~~ produced, precise time period of production, and the name and relationship, if any, of the buyer of the electricity; and

(4) ~~[evidence of ownership (whole or partial) of a qualified energy generator]~~ a notice of allocation indicating the allocation of the right to claim the tax credit and evidence of each taxpayers' ownership interest.

B. For purposes of monitoring the applicant's compliance with this part, the division or its authorized representative shall have the right to visit a qualified energy generator upon giving the applicant five days notice ~~[being given to the owner]~~.

C. If the division finds that a qualified energy generator, for which it has approved an application package ~~[has been approved]~~, meets ~~[the]~~ this part's criteria ~~[of this part]~~, the division shall issue a certificate to the ~~[taxpayer]~~ applicant stating that the facility is an eligible qualified energy generator, the facility's estimated annual production potential ~~[of the facility]~~ and the limit of that facility's energy production eligible for the tax credit.

[3.13.19.12 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.13 CLAIMING THE TAX CREDIT:

A. To claim the renewable energy production tax credit, a taxpayer ~~[who has been certified as eligible]~~ shall submit to the New Mexico taxation and revenue department~~[-]~~ the certificate ~~the department~~ issued ~~[by the department]~~ to the applicant stating that the facility is an eligible qualified energy generator, a copy of the certificate the department issued to

the taxpayer showing the taxpayer's right to claim all or a portion of the tax credit, documentation showing the taxpayer's ownership interest in the qualified energy generator, documentation of the amount of energy the qualified energy generator produced ~~[by the taxpayer's facility]~~ in the taxable year, and any other information the taxation and revenue department may require to determine the amount of the credit due to ~~[the]~~ each taxpayer claiming the credit.

B. If the amount of tax credit ~~[claimed]~~ the taxpayer claims exceeds the ~~[certified]~~ taxpayer's corporate income tax liability, the taxpayer may carry the excess ~~[may be carried]~~ forward for up to five consecutive taxable years.

C. Once ~~[a taxpayer has been certified for a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to]~~ the department has certified a facility as a qualified energy generator eligible for the tax credit taxpayers retain ~~[its]~~ the original date of application for tax credits for that facility until either the ~~[facility]~~ qualified energy generator is out of production for more than six consecutive months in a year or until the ~~[facility's]~~ qualified energy generator's ~~[ten]~~ 10-year eligibility has expired.

[3.13.19.13 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.14 ALLOCATION OF TAX CREDIT:

A. A business entity may allocate a taxpayer all or a portion of the right to claim a tax credit without regard to proportional ownership if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity (a) is the applicant; (b) owns an interest in the business entity, the applicant, that is also taxed for federal income tax purposes as a partnership; or (c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in a business entity, the applicant, as described in (b); and

(3) the taxpayer and all other taxpayers a business entity allocates a right to claim the renewable energy production tax credit pursuant to this section collectively have at least a five percent ownership interest in the applicant's qualified energy generator; collective ownership means that a business entity, which may be a partnership or have subsidiary business entities, owns at least a five percent interest in the qualified energy generator; a business entity that owns at least a five percent interest in the qualified energy generator may receive the right to all of a tax credit, but shall only allocate that right to its subsidiaries or partners based upon their actual ownership

interest in the business entity; for example, the business entity owning the five percent interest is a partnership comprised of three business entities; one business entity owns a 40 percent interest in the business and the other two business entities each own a 30 percent interest; 90 percent of the tax credit is allocated to the business entity that owns a five percent interest in the qualified energy generator; the partner owning 40 percent is entitled to 36 percent of the total tax credit and the other two partners are each entitled to 27 percent of the total tax credit.

B. In order to allocate all or a portion of the right to claim a renewable energy production tax credit, a business entity shall notify the applicant of its allocation. The applicant shall then compile each business entity's allocation and submit the notice of the allocation with documentation of each taxpayer's ownership interest to the department on forms the department provides.

C. Upon receiving the notice of allocation from the applicant, the department shall promptly certify the allocation in writing to the applicant and any taxpayer receiving the allocation if the taxpayer meets the criteria in Subsection A of 3.13.19.14 NMAC. A taxpayer receiving an allocation shall be entitled to claim all such tax credit allocated to it that was generated during the tax year.

D. If ownership of a business entity that has been allocated a right to claim all or a portion of the right to claim a tax credit changes, the replacement owner shall be entitled to claim the tax credit. The applicant may submit a revised notice of allocation only once in a calendar year and in no event later than December 31 of the calendar year for the revised allocation. [3.13.19.14 NMAC - N, 03-31-06]

3.13.19.15 DETERMINATION OF WHETHER A GENERATOR IS A SEPARATE FACILITY: When determining whether a generator is a separate facility or is one of several generators located in the same geographical location (e.g. mesa, section of land) that comprise a single facility, the division shall consider the following factors that indicate whether or not the generators are operated as separate facilities. The division shall consider factors such as whether the same corporate entity holds title to or leases property from a county or municipality pursuant to an industrial revenue bond where the generating infrastructure is located; whether the same buyer is purchasing the electricity the generators produce; whether the generators have different interconnection agreements or system impact study agreements; whether the generators have different power purchase or project finance agreements; whether the

generator is connected with other generators before entering the main transmission line; and any other factor the director deems relevant to the determination.

[3.13.19.15 NMAC - N, 03-31-06]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.3 NMAC, Section 11, effective March 31, 2006.

19.31.3.11 RESTRICTIONS:

A. One license per big game species per year: It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the specified dates, legal sporting arms, bag limit and area. Except that a permit or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU or AMU, that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

C. Rocky Mountain bighorn sheep - once-in-a-lifetime hunts: It shall be unlawful for anyone to apply for a Rocky Mountain bighorn sheep license if one has previously held a license to hunt Rocky Mountain bighorn sheep in New Mexico, including the youth-only bighorn hunt. However, a person that has received the youth-only license is allowed to apply for the regular once-in-a-lifetime bighorn hunts as long as they are eligible. Exception: An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he/she has previously held a license to hunt Rocky Mountain or desert bighorn sheep in New Mexico.

D. Desert bighorn sheep - once-in-a-lifetime: It shall be unlawful for anyone to apply for a desert mountain bighorn sheep license if one has previously held a license to hunt desert mountain bighorn sheep in New Mexico. Exception: An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he/she has previously held a license to hunt Rocky Mountain or desert bighorn sheep in New Mexico.

E. [RESERVED]

F. Ibex - once-in-a-lifetime: It shall be unlawful for anyone to apply for a once in a lifetime ibex license if he/she ever held a once in a lifetime license to hunt ibex. Youth ibex hunts, year-round off-mountain hunts, and hunts for female or immature (FIM) ibex, as designated in 19.31.8 NMAC, are not once-in-a-lifetime hunts.

G. Oryx - once-in-a-lifetime: It shall be unlawful, beginning April 1, 1993, for anyone to apply for an oryx license if he/she ever held a "once-in-a-lifetime" license to hunt oryx. Exception: Depredation population reduction oryx hunts, youth oryx hunts and incentive hunts are not once-in-a-lifetime hunts.

H. Valle Vidal (as described in Subsection A of 19.30.4.11 NMAC):

(1) It shall be unlawful for anyone to apply for a license to hunt bull elk on the Valle Vidal if he/she has ever held a license allowing them to take a bull elk on the Valle Vidal since 1983. This restriction applies to all licenses valid for a bag limit of mature bull (MB), either sex (ES) or mature bull/antlerless (MB/A). It shall be unlawful for anyone to apply for a license to hunt antlerless elk on the Valle Vidal if he/she has ever held a Valle Vidal elk license valid for a bag limit of antlerless since 1983. Either sex (ES) or mature bull/antlerless (MB/A) shall not be considered as an "antlerless" license for this restriction. Persons who have held a Valle Vidal elk license through any incentive program are exempt from this restriction.

(2) It shall be unlawful to hunt bear on the Valle Vidal except for properly licensed bear hunters that possess a Valle Vidal elk hunting muzzleloader, bow, or rifle license and only during the dates of the elk hunt specified. Use of dogs shall not be allowed for bear hunting on the Valle Vidal.

I. Transfer of permits or licenses: The director may grant the transfer of a hunting license or permit once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has; died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

J. Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has; died, sustained an injury or

life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting.

K. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a person who has been qualified through a nonprofit wish-granting organization. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit wish-granting organizations that identify and submit recipients for donated licenses or permits. However, any once-in-a-lifetime licensee may be re-instated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit wish granting organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

L. More than one application: It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation. Exception: An individual may apply for both a population reduction hunt on public or private land and a special drawing hunt. However, an applicant shall follow the application procedures outlined in 19.31.3.8 NMAC.

M. Deer hunts: It shall be unlawful for any person who is issued a deer hunting permit:

(1) to hunt with any sporting arms type other than that for which his/her deer permit is validated;

(2) to hunt during any season other than that for which his/her deer permit is validated;

(3) to hunt in any GMU other than that for which his/her deer permit is validated;

(4) to hunt deer on public land in any GMU with a private land deer permit, except in conjunction with this subsection, if it is on state land where there is a valid agreement for unitizing state leased and privately owned or leased lands; or

(5) to hunt private property without possessing a valid deer permit, the proper deer license and written permission.

N. Handicapped fishing or handicapped general hunting license qualifications: To hold a handicapped fishing or handicapped general hunting license,

the individual must be a resident of New Mexico and must show proof of a severe disability by reason of one or more physical disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end-stage renal disease, or who has a combination of permanent disabilities which cause comparable substantial functional limitation. Reasonable accommodation will be made, relating to these licenses, upon request.

O. Mobility impaired (MI) deer, elk or antelope license qualifications: To hold a mobility impaired deer, elk or antelope license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility.

(1) Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

(2) All current MI card holders shall have their card expire on March 15, 2007 and must resubmit on the proper department form and obtain department approval prior to being eligible to apply for MI designated hunt codes.

P. One deer permit per year: It shall be unlawful for anyone to hold more than one deer permit during the current license year.

Q. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. Applicant for firearm hunts must provide hunter education certificate number on application.

R. Bear entry hunt: It shall be unlawful to hunt bear in designated wildlife areas without having a valid bear entry permit and a valid license in the hunter's possession. Bear entry hunters shall be allowed to hunt any other bear hunt provided they have a valid license and tag.

S. An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social secu-

rity number prior to an application form being processed or a license being awarded.

T. It shall be unlawful to hunt pheasant in Valencia county without possessing a valid pheasant permit, the proper license and written permission.

(1) Exception: A hunter with a Valencia county pheasant north hunt or south hunt area permit is not required to have written permission for these specific hunt areas.

(2) It is unlawful for a hunter that successfully draws a Valencia county pheasant north hunt or south hunt to hunt any other area or property outside of the designated hunt area in Valencia county that same season.

U. GMU 4 and 5A private land only hunts: Deer hunt applicants in GMUs 4 and 5A must obtain a special application from landowner. GMU 4 and 5A landowners may be required to provide proof of land ownership to obtain special application forms.

V. Military only hunts: Applicants must be full time active military and proof of military status must accompany application.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 12-30-04; A, 6-30-05; A, 9-30-05; A, 10-31-2005; A, 3-31-2006]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.34.7 NMAC, Section 8, effective March 31, 2006.

19.34.7.8 CONSERVATION & ACCESS FEE: On or after April 1, 2006 each resident and nonresident license or permit shall include a \$1.00 PLEASE conservation and access fee. No resident and nonresident license or permit shall be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check-off or other official mark, that the fee for conservation and access has been paid, provided that an individual purchaser shall be required to pay for only one conservation and access fee each license year, regardless of the number of licenses or permits purchased by the licensee. Exceptions: No person under the age of 18, no angler age 70 and older and no person designated by the department as 100% disabled resident veteran is required to purchase the PLEASE conservation and access fee.

[19.34.7.8 NMAC - N, 10-31-2005; A, 3-31-2006]

NEW MEXICO HUMAN SERVICES DEPARTMENT
 MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Section 11, which will be effective on April 1, 2006. The Medical Assistance Division amended subsections in Section 11 by changing the poverty income guidelines dollar amounts.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. **100% of federal poverty:** 100% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$798] \$817 per month*
2	[\$1,070] \$1,100 per month*
3	[\$1,341] \$1,384 per month
4	[\$1,613] \$1,667 per month
5	[\$1,885] \$1,950 per month
6	[\$2,156] \$2,234 per month
7	[\$2,428] \$2,517 per month
8	[\$2,700] \$2,800 per month

Add ~~[\$272]~~ \$283 for each additional person in the assistance unit.

* Use only these two standards for the QMB program.

B. **120% of federal poverty:** This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants/recipients.

<u>Applicant/recipient</u>	<u>Amount</u>
----------------------------	---------------

1. Individual At least ~~[\$798]~~ \$817 per month but no more than ~~[\$957]~~ \$980 per month.
2. Couple At least ~~[\$1,070]~~ \$1,100 per month but no more than ~~[\$1,283]~~ \$1,320 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. **133% of federal poverty:** 133% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$1,061] \$1,087 per month
2	[\$1,422] \$1,463 per month
3	[\$1,784] \$1,840 per month
4	[\$2,145] \$2,217 per month
5	[\$2,506] \$2,594 per month
6	[\$2,868] \$2,971 per month
7	[\$3,229] \$3,348 per month
8	[\$3,590] \$3,724 per month

Add ~~[\$361]~~ \$376 for each additional person in the assistance unit.

D. **135% of federal poverty:** This income level is used only in the determination of the maximum income limit for qualified individuals 1 (QI-1) applicants/recipients. The following income levels apply:

<u>Applicant/recipient</u>	<u>Amount</u>
----------------------------	---------------

1. Individual At least ~~[\$957]~~ \$980 per month but no more than ~~[\$1,077]~~ \$1,103 per month.
2. Couple At least ~~[\$1,283]~~ \$1,320 per month but no more than ~~[\$1,444]~~ \$1,485 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

E. **150% of federal poverty:** This income level is used only in the determination of the maximum income limit for state coverage insurance (SCI) (category 062) applicants/recipients. The following income levels apply:

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	\$1,225 per month
2	\$1,650 per month
3	\$2,075 per month
4	\$2,500 per month
5	\$2,925 per month
6	\$3,350 per month
7	\$3,775 per month
8	\$4,200 per month

Add \$425 for each additional person in the assistance unit.

~~[E-]~~ E. **185% of federal poverty:**

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$1,476] \$1,511 per month
2	[\$1,978] \$2,035 per month
3	[\$2,481] \$2,560 per month
4	[\$2,984] \$3,084 per month
5	[\$3,486] \$3,608 per month
6	[\$3,989] \$4,132 per month
7	[\$4,491] \$4,656 per month
8	[\$4,994] \$5,180 per month

Add ~~[\$503]~~ \$524 for each additional person in the assistance unit.

[F.] G. **200% of federal poverty:** 200% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[\$1,595] \$1,634
2	[\$2,139] \$2,200
3	\$2,767
4	\$3,334
5	\$3,900
6	\$4,467
7	\$5,034
8	\$5,600

Add \$566 for each additional person in the assistance unit.

[G.] H. **235% of federal poverty:** 235% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[\$1,875] \$1,920 per month
2	[\$2,513] \$2,585 per month
3	[\$3,151] \$3,253 per month
4	[\$3,790] \$3,918 per month
5	[\$4,428] \$4,583 per month
6	[\$5,067] \$5,250 per month
7	[\$5,705] \$5,915 per month
8	[\$6,344] \$6,580 per month

Add ~~[\$639]~~ \$665 for each additional person in the assistance unit.

[H.] I. **250% of federal poverty:** 250% of federal poverty income guidelines

Size of assistance unit	Poverty income guidelines
1	[\$1,994] \$2,042 per month
2	[\$2,673] \$2,750 per month
3	[\$3,353] \$3,459 per month
4	[\$4,032] \$4,167 per month
5	[\$4,711] \$4,875 per month
6	[\$5,390] \$5,584 per month
7	[\$6,069] \$6,292 per month
8	[\$6,748] \$7,000 per month

Add ~~[\$679]~~ \$708 for each additional person in the assistance unit.

[1-1-95, 4-1-95, 4-15-96, 4-1-97, 3-31-98, 3-1-99, 4-1-99, 4-1-00; 8.200.520.11 NMAC - Rn, 8 NMAC 4.MAD.520.1-5, & 14, & A, 1-1-01; A, 4-1-01; A, 4-1-02; A, 4-1-03; A, 4-1-04; A, 4-1-05; A, 4-1-06]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.1 NMAC, Section 7, effective 3-31-06.

1.7.1.7 DEFINITIONS:

- A. "Agency" means any state department, bureau, division, branch or administrative group which is under the same employer.
- B. "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different classification in the same pay band. The director shall resolve disputes over how an anniversary date is derived.
- C. "Applicant" means any person, who has applied for a position in the classified service.
- D. "Board" means the personnel board.
- E. "Break in employment" means any period of separation of at least one workday of not being in the classified service.
- F. "Candidate" means any person who is on the employment list for a

position.

- G. "Classified service" means all positions in the executive branch of state government which are not exempt by law.
- H. "Classification" means a job that is occupationally and quantifiably distinct.
- I. "Compa-ratio" means pay expressed as a percentage of the mid-point of a pay band.
- J. "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a classified position in one pay band to a classified position in a lower pay band with a reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.
- K. "Director" means the state personnel director.
- L. "Dismissal" means the involuntary separation from employment for disciplinary reasons.
- M. "Diversity in the workplace" means an acknowledgment of all people equally, regardless of their differences. Agencies' management of diversity will ensure that efforts are made to adapt to

and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

- N. "Employee" means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from NMSA 1978, Section 10-9-3-(I) but in no way confers a greater right on certain persons than contemplated by Section 10-9-3(I)].
- O. "Employer" means any authority having power to fill positions in an agency.
- P. "Employment list" means the list of names, certified by the director, from which a candidate may be selected for appointment.
- Q. "Established requirements" means a position's individual job related qualification standards established by the agency and the office in accordance with the specific requirements and/or needs of the position and are subject to review by the director.
- R. "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

S. "Exempt service" means all positions in the executive branch of state government exempt from the classified service by law.

T. "Filed" means received by the office.

U. "First line supervisor" means an employee in a technical occupation group who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

V. "Involuntary separation" means involuntary removal of an employee from the classified service without prejudice as provided for in *1.7.10.13 NMAC*.

W. "Line authority" means the assignment of activities and/or approval authority in a manner that does not relinquish the director's administrative oversight or authority.

X. "Manager" means an employee in a position that manages internal staff and/or external staff, and who plans, organizes, integrates, coordinates, and controls the activities of others. A manager also is held accountable for the performance of people, services, systems, programs and resources and can change their direction, objectives and assignments to meet performance and business needs.

Y. "Midpoint" means the salary midway between the minimum and maximum pay rates of a pay band or pay opportunity that represents the competitive market rate for jobs of the same relative worth in the relevant labor market(s). Midpoint represents a compa-ratio value of 1.00 or 100% percent.

Z. "Minimum qualifications" means statutory requirements as required by law, which shall be used to reject applicants.

AA. "Office" means the state personnel office.

BB. "Pay band" means the range of pay rates, from minimum to maximum.

CC. "Probationer" means an employee in the classified service who has not completed the one-year probationary period.

DD. "Promotion" means the

change of an employee from a classified position in one pay band to a classified position in a higher pay band.

EE. "Reduction" means a voluntary change without prejudice, within an employee's pay band, or from a classified position in one pay band to a classified position in a lower pay band, or voluntary removal of supervisory or leadworker responsibilities and pay.

FF. "Relation by blood or marriage within the third degree" includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

GG. "Resignation" means the voluntary separation of an employee from the classified service.

HH. "Rules" means the rules and regulations of the personnel board.

II. "Status" means all of the rights and privileges of an appointment.

JJ. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days [~~or with the approval of the director a temporary reduction in pay for a period not to exceed 160 consecutive work hours~~].

KK. "Transfer" means the movement of an employee from one position to another in the same pay band without a break in employment.

LL. "Without prejudice" means a declaration that no rights or privileges of the employee concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.

MM. "Writing or written" means in the written form and/or an alternative format, where deemed appropriate, and when requested.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 07/07/01; A, 11/14/02; A 10/30/03; A, 7-15-05; A, 12-30-05; A/E, 1-30-06; A, 3-31-06]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.4 NMAC, Section 12, effective 3-31-06.

1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance Salary: Upon entrance to a classified position, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor

zone must receive approval from the director prior to appointment.

B. Legislative Authorized Salary Increase:

(1) Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within their assigned pay band.

(2) Employees with a salary at or above the maximum of the position's pay band shall not be eligible for an increase unless authorized by statute.

C. Salary Upon In Pay Band Adjustment: Upon in pay band adjustment, subject to director approval, budget availability and reflective of appropriate placement, agencies may increase an employee's salary up to ten percent (10%) during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than ten percent (10%) and the employee's base salary does not exceed the maximum of the assigned pay band. When reviewing requests for in pay band adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band.

D. Salary Upon Promotion: Upon promotion, an employee's salary subject to budget availability, should reflect appropriate placement within the pay band. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director. A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the pay band or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the pay band does not require the approval of the director. The salary of a promoted employee shall be in accordance with *Subsection B of 1.7.4.11 NMAC*.

E. Salary Upon Demotion: Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay band or the decrease is being made in accordance with *Paragraph (2) of Subsection F of 1.7.4.12 NMAC*.

F. Pay Allowance for Performing First Line Supervisor Duties:

(1) An agency shall grant a pay allowance to an employee in a non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent

in the technical occupation group and shall be between 0% and 20% above the employee's base pay rate.

(2) When the supervisor duties are no longer being performed, the agency shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) Agencies shall require that a form, established by the director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

~~[G.] Salary Upon Suspension:~~ Upon approval by the director, the salary of an employee who has been suspended in accordance with ~~1.7.11 NMAC~~ may be temporarily reduced by up to fifteen percent (15%) for a period not to exceed 160 consecutive work hours.]

~~[H.] G. Salary Upon Transfer:~~

(1) Upon transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased up to ten percent (10%). The director may approve a salary increase greater than ten percent (10%) due to special circumstances that are justified in writing.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

~~[I.] H. Salary Upon Pay Band Change:~~ When a change of pay band is authorized in accordance with the provisions of ~~1.7.4.9 NMAC, 1.7.4.10 NMAC, and/or 1.7.4.11 NMAC~~ the salaries of affected employees shall be determined in accordance with ~~Subsection C of 1.7.4.11 NMAC~~. Employees whose pay band is adjusted upward or downward shall retain their current salary in the new pay band. Employees' salaries may be addressed through in pay band adjustment unless otherwise allowed by statute.

~~[J.] L. Salary Upon Reduction:~~ The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with ~~Paragraph (2) of Subsection F of 1.7.4.12 NMAC~~. An employee's salary should reflect appropriate placement within the pay band. The director may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

~~[K.] J. Salary Upon Return To Work Or Reemployment:~~ The salary of former employees who are returned to work or re-employed in accordance with the provisions of ~~1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14~~

~~NMAC~~ shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay band.

~~[L.] K. Salary Upon Temporary Promotion:~~ Pay for a temporary promotion under ~~Subsection E of 1.7.5.12 NMAC~~, will be administered in accordance with ~~Subsection D of 1.7.4.12 NMAC~~. The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

~~[M.] L. Temporary Salary Increase:~~ An agency may, with the approval of the director, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability and/or a higher valued job. The director may approve temporary salary increases above the maximum of the employee's current pay band. The agency shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

~~[N.] M. Shift Pay:~~ Employees shall be paid, in addition to their regular pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m. Agencies shall notify the director of any change in this rate.

~~[O.] N. Salary Adjustment to Minimum:~~ An employee whose salary falls below the minimum of the pay band will be adjusted in accordance with ~~Paragraph (2) of Sub-Section C of 1.7.4.11 NMAC~~.

[1.7.4.12 NMAC - Rp, 1.7.4.10 NMAC, 11/14/02; A, 7-15-05; 1.7.4.12 NMAC - Rn, 1.7.4.13 NMAC & A, 12-30-05; A/E, 1-30-06; A, 3-31-06]

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO
CHILDREN, YOUTH AND
FAMILIES DEPARTMENT
PROTECTIVE SERVICES DIVISION****NEW MEXICO
CHILDREN, YOUTH AND FAMILIES
DEPARTMENT
PROTECTIVE SERVICES
and
AGING AND LONG TERM SERVICES
DEPARTMENT****NOTICE OF PUBLIC HEARING**

Protective Services (PS) will hold a public hearing in Santa Fe on Monday, May 1, 2006 from 2:00 p.m. to 3:00 p.m. Interested parties are invited to make comments regarding the proposed annual pre and post-expenditure Social Services Block Grant (Title XX) report which will be submitted to the United States Department of Health and Human Services Administration for Children and Families on June 30, 2006. CYFD is the federal cognizant agency for this grant by a joint powers agreement with the Aging and Long-Term Services Department. The report will include both adult protective and child protective services information.

The hearing will be held at the Public Employees Retirement Association (PERA) Building at 1120 Paseo de Peralta, Santa Fe, NM 87501, Room 227. The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The current and proposed reports may be accessed by contacting Mark J Ruttkay at 505-827-8445. Copies can also be requested through the use of the New Mexico relay system by calling 505-827-7586.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 3	July 17
Issue Number 14	July 18	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.